

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 54

THE WHITE MOTOR COMPANY, APPELLANT,

vs.

UNITED STATES.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

FILED DECEMBER 21, 1962

PROBABLE JURISDICTION NOTED APRIL 23, 1962

SUPREME COURT OF THE UNITED STATES

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Exhibits:

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swers to interrogatories—Information re
various "Selling Agreements"

256 112

258A 115

262 116

Plaintiff's Exhibit (Edgerton) 1—Distributor
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fendant and John L. Boitano White Truck
Sales of Petaluma, California

2423 423

Plaintiff's Exhibit (Edgerton) 17—Direct Key
Dealer Selling Agreement (F-631) between
defendant and Regalia Machine Works of
Napa, California

2803 454

Plaintiff's Exhibit (Edgerton) 21—Direct
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defendant and Harold Anderson D B A
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2845 462

Plaintiff's Exhibit (Edgerton) 25—Key Dealer
Selling Agreement (F-682) between Distrib-
utor Baumert-Moran Sales Co., Inc., of Hart-
ford, Connecticut, and Samuel Fishkin &
Son, Inc., of New London, Connecticut

2882 471

Plaintiff's Exhibit (Edgerton) 33—Dealer Sell-
ing Agreement (F-713) between Distributor
Poplar White Truck & Equipment Company
of Erie, Pennsylvania, and Roy S. Carlson
of Edinboro, Pennsylvania

2984 481

Plaintiff's Exhibit (Edgerton) 35—Metropoli-
tan Dealer Selling Agreement (F-604) be-
tween Distributor Parker White Trucks,
Inc., of Rochester, New York, and Martin
Tones of Poughkeepsie, New York

3010 491

Plaintiff's Exhibit (Edgerton) 36—Defen-
dant's distribution system

3022 503

[fol. 1]

[File endorsement omitted]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

Civil Action No. 34593

UNITED STATES OF AMERICA, Plaintiff,

v.

THE WHITE MOTOR COMPANY, Defendant.

AMENDED COMPLAINT—Filed March 28, 1960

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. Sec. 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 3 of the Sherman Act.

2. The defendant maintains executive offices, transacts business and is found within the Northern District of Ohio.

II.

Description of Defendant

3. The White Motor Company (hereinafter referred to as "White"), a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 842 East 79th Street, Cleveland, Ohio, is hereby made a defendant herein.

[fol. 2]

III.

Description of Co-Conspirators

4. The franchised distributors and franchised dealers in White trucks and White parts, not made defendants herein, have participated as co-conspirators in the violations of Sections 1 and 3 of the Sherman Act as hereinafter charged. These co-conspirators are franchised distributors of White trucks and White parts who have signed a "Distributor Selling Agreement" with White and franchised dealers of White trucks and White parts who have signed a "Key Dealer Selling Agreement," a "Metropolitan Dealer Selling Agreement," a "Dealer Selling Agreement," a "Direct Key Dealer Selling Agreement," a "Direct Metropolitan Dealer Selling Agreement," or a "Direct Dealer Selling Agreement," with White.

5. The aforesaid franchised distributors and franchised dealers are also parties with White to the unlawful contracts, agreements and understandings in violation of Sections 1 and 3 of the Sherman Act, as hereinafter charged.

6. The acts alleged in this complaint to have been done by each of the co-conspirators and White were authorized, ordered, or done by the officers, directors, agents, or employees of said co-conspirators or White.

IV.

Definitions

7. "White trucks" as used herein, means new trucks, including chassis, equipment and accessories mounted thereon sold under the name of "White" or "Autocar" and manufactured by White at Cleveland, Ohio, Exton, Pennsylvania, and Springfield, Ohio.

8. "White parts," as used herein, means new truck parts suitable for White trucks and manufactured by White or manufactured by others for White.

[fol. 3] 9. "Franchised distributor," as used herein, means a person, firm or corporation franchised by White as a distributor of White trucks and White parts to franchised dealers and others.

10. "Franchised dealer," as used herein, means a person, firm or corporation franchised by a franchised distributor, with the approval of White, as a retail seller of White trucks and White parts, and includes a "Key Dealer," a "Metropolitan Dealer," and a "Dealer," and a person, firm, or corporation franchised directly by White as a retail seller of White trucks and White parts and includes a "Direct Key Dealer," a "Direct Metropolitan Dealer," and a "Direct Dealer."

11. "Exclusive territory," as used herein, means each separate and distinct geographical area designated in each franchised agreement between White and its franchised distributors and directly franchised dealers and between each franchised distributor and its franchised dealers.

V.

Nature of Trade and Commerce

12. White trucks and White parts are manufactured by White at Cleveland, Ohio, Exton, Pennsylvania, and Springfield, Ohio, and are sold by White to over 200 franchised distributors, over 12 directly franchised dealers, and certain specified accounts designated by White as "National Accounts" and "Government Sales," located throughout the United States and the District of Columbia.

13. White trucks and White parts, purchased from White by franchised distributors, are resold by such franchised distributors to over 80 franchised dealers and others, located throughout the United States and the District of Columbia. White trucks and White parts purchased by franchised dealers from White, and from franchised distributors, are resold by such franchised dealers to consumers located throughout the United States and the District of Columbia.

[fol. 4]. 14. There is a continuous flow in interstate trade and commerce of White trucks and White parts from the plants of White in Ohio and Pennsylvania through franchised distributors and franchised dealers to consumers located throughout the United States and the District of

Columbia, and from such plants directly to certain specified accounts designated by White as "National Accounts" and "Government Sales," located throughout the United States and the District of Columbia.

15. White is one of the leading United States manufacturers of medium to heavy duty trucks and parts therefor. The total average wholesale value of White trucks and White parts sold by White in 1955, 1956, and 1957 exceeded \$200,000,000 per annum. The total average wholesale value of White trucks and White parts sold by White to its franchised distributors and franchised dealers in 1955, 1956, and 1957 exceeded \$85,000,000 per annum.

VI.

Offenses Charged

Violations of Sections 1 and 3 of the Sherman Act.

16. Beginning on or about January 1, 1955, and continuing up to and including the date of the filing of this complaint, White and the co-conspirators have been and now are engaged in a combination and conspiracy, and have been and are now parties to unlawful contracts, agreements and understandings, in unreasonable restraint of the hereinabove described trade and commerce in White trucks and White parts, in violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. §§ 1 and 3).

17. The unlawful combination and conspiracy has consisted of a continuing agreement and concert of action among White and the co-conspirators, the substantial terms of which have been and are that:

- (a) Each franchised distributor will sell White trucks to those customers and franchised dealers only who [fol. 5] have a place of business or purchasing headquarters within the exclusive territory assigned by White to such franchised distributor, and each franchised dealer will sell White trucks to those customers only who have a place of business or purchasing headquarters within the exclusive territory assigned to such franchised dealer by its franchised distributor or by White;

- (b) Franchised distributors and franchised dealers selling White trucks outside their exclusive territories must pay the franchised distributor or franchised dealer in whose exclusive territory such White trucks are first registered or placed in initial service a specified amount of money for violation of said exclusive territory;
- (c) Franchised distributors and franchised dealers will not sell White trucks to others for resale;
- (d) Franchised distributors and franchised dealers will not sell White trucks to any Federal or State Government or any department or political subdivision thereof, such customers being reserved exclusively by White for its direct sales;
- (e) Franchised distributors will sell White trucks and White parts to franchised dealers at prices fixed by White;
- (f) Franchised distributors and franchised dealers will sell White parts to customers designated by White as "National Accounts," and "Fleet Accounts" and Federal and State Governments at prices fixed by White.

18. The unlawful contracts, agreements and understandings referred to in paragraph 16 of this complaint are among White and the co-conspirators and embody the substantial terms of the unlawful combination and conspiracy as set forth in subparagraphs (a) to (f), inclusive, of the [fol. 6] preceding paragraph of this complaint.

19. For the purpose of carrying out the aforesaid unlawful combination and conspiracy and the aforesaid unlawful contracts, agreements, and understandings, White and the co-conspirators by agreement and concert of action have done the things which as hereinabove alleged they conspired and agreed to do.

20. White is continuing and will continue the offenses alleged in paragraphs 16, 17, 18, and 19 of this complaint unless the relief hereinafter prayed for is granted.

VII. Effects

21. The unlawful combination and conspiracy and the unlawful contracts, agreements and understandings hereinbefore described have had the following effects, among others:

- (a) Wholesale prices of White trucks and White parts and retail prices of White parts have been fixed at arbitrary and non-competitive levels;
- (b) Competition among franchised distributors and franchised dealers of White trucks and White parts has been eliminated;
- (c) Franchised distributors and franchised dealers of White trucks have been prevented from selling such trucks owned by them to purchasers of their own choice.

Prayer

Wherefore, the Plaintiff Prays:

1. That the aforesaid combination and conspiracy, and the aforesaid contracts, agreements and understandings among White and the co-conspirators in restraint of the trade and commerce hereinabove described in White trucks and White parts be adjudged and decreed to be unlawful [fol. 7] and in violation of Sections 1 and 3 of the Sherman Act;

2. That White and its officers, directors, agents and employees, and all persons acting or claiming to act on its behalf, be perpetually enjoined from continuing, reviving or renewing the aforesaid combination and conspiracy and the aforesaid contracts, agreements and understandings, and from engaging in practices having the purpose or effect of continuing, reviving or renewing any similar violations of the Sherman Act;

3. That White and its officers, directors, agents and employees and all persons acting or claiming to act on its behalf, be perpetually enjoined from imposing or attempt-

ing to impose any limitation or restriction on the prices at which, the persons to whom, or the territories within which distributors or dealers of White trucks or White parts may sell such products;

4. That White be required to notify and advise all of its distributors and dealers that they may sell White trucks and White parts at such prices, to such persons, and in such areas as they may choose;

5. That White be required to revise its distributor and dealer contracts, arrangements and understandings so as to conform to the provisions of the judgment entered in this cause;

6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper;

7. That the plaintiff recover its taxable costs.

William P. Rogers, Attorney General, Robert A. Bicks, Acting Assistant Attorney General, Charles L. Whittinghill, Attorney, Department of Justice, Leo A. Roth, Attorney, Department of Justice, Robert B. Hummel, Frank B. Moore, Jr., John D. Shaw, Jr., Attorneys, Department of Justice.

[fol. 8]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

[Title omitted]

ANSWER TO AMENDED COMPLAINT—Filed April 5, 1960

Now comes the above named defendant, The White Motor Company, and, for its answer to the plaintiff's Amended Complaint in this case filed, says:

1. This defendant admits that the Amended Complaint herein purports to be filed and these proceedings purport to be instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U. S. C. Sec. 4), as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act; and this defendant denies each and every other allegation contained in paragraph 1 of the Amended Complaint.

2. This defendant admits the allegations contained in paragraph 2 of the Amended Complaint.

3. This defendant admits the allegations contained in paragraph 3 of the Amended Complaint.

4. This defendant denies each and every allegation contained in paragraph 4 of the Amended Complaint.

5. This defendant denies each and every allegation contained in paragraph 5 of the Amended Complaint.

6. This defendant denies each and every allegation contained in paragraph 6 of the Amended Complaint.

7. This defendant admits that the plaintiff may define, as in paragraph 7 of the Amended Complaint set forth, the term "White trucks" as used in the Amended Complaint; but this defendant denies that any trucks, chassis, [fol. 9] equipment or accessories are manufactured at Springfield, Ohio.

8. This defendant admits that the plaintiff may define, as in paragraph 8 of the Amended Complaint set forth, the term "White parts" as used in the Amended Complaint.

9. This defendant admits that the plaintiff may define, as in paragraph 9 of the Amended Complaint set forth, the term "franchised distributor" as used in the Amended Complaint.

10. This defendant admits that the plaintiff may define, as in paragraph 10 of the Amended Complaint set forth, the term "franchised dealer" as used in the Amended Complaint.

11. This defendant admits that the plaintiff may define, as in paragraph 11 of the Amended Complaint set forth, the term "exclusive territory" as used in the Amended Complaint.

12. This defendant admits that White trucks and White parts are manufactured by The White Motor Company at Cleveland, Ohio, and Exton, Pennsylvania, and are sold throughout the United States and the District of Columbia by The White Motor Company to over 200 distributors, and by The White Motor Company directly to over 12 dealers, and to companies sometimes called "National Accounts", and to governmental divisions, such sales being sometimes called "Government Sales"; and this defendant denies each and every allegation contained in paragraph 12, of the Amended Complaint not heretofore admitted.

13. This defendant admits that White trucks and White parts, purchased from The White Motor Company by distributors, are resold by such distributors to over 80 dealers and others located throughout the United States and the District of Columbia, and that White trucks and White parts purchased by dealers from The White Motor Company and from distributors are resold by such dealers to consumers located throughout the United States and the District of Columbia.

14. This defendant admits that there is a continuous flow in interstate trade and commerce of White trucks and White parts from the plants of The White Motor Company in Ohio and Pennsylvania through distributors and dealers to consumers located throughout the United States and the [fol. 10] District of Columbia and from The White Motor Company's manufacturing plants and sales and service branches directly to consumers located throughout the United States and the District of Columbia, some of which are sometimes called "National Accounts" and the sales to some of which are sometimes called "Government Sales".

15. This defendant admits that The White Motor Company is one of the best-known United States manufacturers of medium to heavy duty trucks and parts therefor, and that the total average wholesale value of White trucks and

White parts sold by The White Motor Company to its distributors and dealers in 1956 and 1957 exceeded \$85,000,000 per annum; and this defendant denies each and every allegation contained in paragraph 15 of the Amended Complaint which is not hereinabove admitted.

16. This defendant denies each and every allegation contained in paragraph 16 of the Amended Complaint.

17. This defendant denies each and every allegation contained in paragraph 17 of the Amended Complaint.

18. This defendant denies each and every allegation contained in paragraph 18 of the Amended Complaint.

19. This defendant denies each and every allegation contained in paragraph 19 of the Amended Complaint.

20. This defendant denies each and every allegation contained in paragraph 20 of the Amended Complaint.

21. This defendant denies each and every allegation contained in paragraph 21 of the Amended Complaint.

John H. Watson, Jr., John T. Scott, 1649 Union Commerce Building, Cleveland, Ohio, Attorneys for Defendant, The White Motor Company.

M. B. & H. U. Johnson, 1649 Union Commerce Building, Cleveland, Ohio, Of Counsel.

I certify that on this 5th day of April, 1960, I personally served a copy of the foregoing on counsel for the plaintiff.

James M. Porter.

[Vol. 23]

[File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Title omitted]

EXCERPTS FROM ANSWERS OF THE DEFENDANT TO
PLAINTIFF'S INTERROGATORIES Filed December 1, 1958

The defendant, The White Motor Company, by A. D. Edgerton, its Secretary, answers the Interrogatories served on it by the plaintiff on August 19, 1958, as follows:

Interrogatory 1

The name and address of each person who, at any time since January 1, 1954, has operated under a selling agreement with The White Motor Company or, so far as The White Motor Company knows, under a selling agreement with a distributor selling under a selling agreement with The White Motor Company, to distribute and or deal in White trucks and/or White parts, are set forth in Exhibit A hereunto attached and hereby made a part hereof.

Interrogatory 2

(a) The date when each selling agreement hereinabove referred to in the answer to Interrogatory 1 was executed, and, if terminated, the date of termination thereof, are set forth in Exhibit A hereunto attached and hereby made a part hereof, subject to the following explanations and qualifications: The date filled in on the pages in said Exhibit A at the end of the line reading "2 (a) Date of Contract or Assumption Thereof" is the date on which the agreement was made by the defendant, or, if the agreement was not originally made by the defendant, the date of the assumption of the agreement by the defendant. Wherever no date is stated on the pages in said Exhibit A at the end of the line reading "2 (a) Termination Date of Contract", the agreement was not terminated and was still in effect on August

19, 1958, unless a date is filled in at the end of the line reading "[fol. 24] ing "Contract Replaced by Contract with Diamond T Motor Truck Company on" or at the end of the line reading "Contract Replaced by New Contract on", as the case may be. Wherever no date is stated on the pages in said Exhibit A at the end of the line reading "Termination Date of Contract with Diamond T Motor Truck Company", or at the end of the line reading "Termination Date of New Contract", as the case may be, such agreement, if any, had not been terminated and was still in effect on August 19, 1958. The phrase "Termination Date of Contract", wherever used on the pages of Exhibit A, means the date when the agreement was terminated and not necessarily a date of termination provided for in the agreement. Diamond T Motor Truck Company is a wholly owned subsidiary of the defendant.

(b) The selling territory assigned in each of the selling agreements hereinabove referred to in the answer to Interrogatory 1 is set forth in Exhibit A herunto attached and made a part hereof. Wherever no territory is stated on the pages in said Exhibit A after or underneath the line "2 (b) Selling Territory Assigned:", there was no assignment of selling territory.

(c) The distributors marketing trucks of the defendant's White Division (who also market trucks of the defendant's Autocar Division) have authority by virtue of their written selling agreements to sell such trucks to the defendant's branches and approved distributors and direct key dealers and direct dealers and distributor's key dealers and dealers, for resale. The direct key dealers and direct dealers marketing trucks of the White and Autocar Divisions of the defendant are authorized by virtue of their written selling agreements to sell such trucks to the defendant's branches and approved distributors and direct dealers and distributor's key dealers and dealers, for resale. The distributors marketing products of the defendant's Reo Division have authority by virtue of their written selling agreements to sell Reo Division trucks for resale. The Reo Division has no dealers except its "distributors". The dealers marketing products sold by Diamond T Motor Truck Company have

authority by virtue of their written selling agreements to sell Diamond T Division motor trucks for resale.

(d) The written selling agreements of the defendant do not grant written authority to its distributors or dealers to sell to Federal or State government agencies trucks manufactured or sold by the defendant, in the absence of specific written authority to do so. A list of sales made by [fol. 25] the defendant's distributors or dealers to Federal and State government agencies by authorization of the defendant during the period from January 1, 1954, to August 19, 1958, is set forth in Exhibit B hereto attached and hereby made a part hereof.

(e) The distributors and dealers selling defendant's trucks have a right under their written selling agreements to sell the defendant's trucks to "national accounts" or "fleet accounts". Exhibit C hereto attached and hereby made a part hereof contains a list of the sales made, during the period from January 1, 1954, to July 31, 1958, by the defendant's distributors or dealers to "national accounts" of which the defendant has knowledge, but there may be many such sales of which the defendant has no knowledge. The defendant has no knowledge as to the innumerable sales made by distributors or dealers to "fleet accounts" during the aforesaid period.

(f) So far as the officers of the defendant know or have been able to ascertain, the defendant, during the period from January 1, 1954, to August 19, 1958, has not refused to grant written authority to any of its distributors or dealers to sell the defendant's trucks for resale, or to a Federal or State government agency, or to a "national account" or to a "fleet account".

[fol. 52] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
Civil Action No. 34,593

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE WHITE MOTOR COMPANY, Defendant.

**Deposition of Alfred Dixon Edgerton—
Filed October 16, 1959**

Deposition of Alfred Dixon Edgerton taken pursuant to agreement at 604 Public Square Building, Cleveland, Ohio, on Thursday, July 23, 1959, commencing at 10:00 a. m., before Martin Finck, a Notary Public in and for the State of Ohio.

APPEARANCES:

Department of Justice, Antitrust Division, by
Frank B. Moore and
John D. Shaw,

Attorneys on behalf of Plaintiff.

M. B. & H. H. Johnson:
John T. Watson, Jr., of counsel,
Attorneys for Defendant.

[fol. 53] ALFRED DIXON EDGERTON of lawful age, a witness called for cross examination by the plaintiff, being by me first duly sworn, hereinafter certified, was examined and testified as follows:

Cross examination.

By Mr. Moore:

Q. Would you kindly state your name, sir?

A. My name is Alfred Dixon Edgerton.

Q. What is your residence address?

A. 13980 Edgewater Drive, Lakewood 7, Ohio.

Q. Your business address?

A. 842 East 79th Street, Cleveland, Ohio.

Q. Mr. Edgerton, with whom are you employed?

A. The White Motor Company.

Q. How long have you been so employed?

A. Approximately 20 years.

Q. What is your present position with The White Motor Company?

A. I am secretary of The White Motor Company.

Q. For what period of time have you been secretary?

A. Since March, 1958.

Q. Prior to March, 1958, what was your position?

A. I was assistant secretary starting in 1947 until the time of becoming secretary. I was assistant secretary and also had duties as resident counsel and patent attorney (fol. 54). Q. During the period of time in which you were assistant secretary of The White Motor Company, who was secretary?

A. Mr. Paul Rice was secretary.

I am not sure about the dates. In 1947, when I first became assistant secretary, it was Mr. William Searles, and I believe it was '49 that he retired and that Mr. Paul Rice became secretary. I am not quite certain. It is about that time, though.

Q. During the period of time Mr. Rice was secretary and you were assistant secretary, were you his immediate assistant?

Let me rephrase the question, please. Was he your immediate supervisor?

A. Yes.

Q. Is it correct that Mr. Rice is presently deceased?

A. That's correct.

Q. When did he die?

A. March of 1958. I don't have the exact date.

Q. To your knowledge, is there a specific official at The White Motor Company who is charged with the responsibility of the custody of agreements and contracts involving The White Motor Company?

A. The secretary is officially charged with the custody

of agreements and documents of The White Motor Company.

[fol. 55] Q. As assistant secretary, was that also your responsibility?

A. Merely an ancillary responsibility; it was not full.

Q. You were served with a subpoena to produce certain documents. Do you have those documents with you, Mr. Edgerton?

A. Yes, I do.

Q. Do you have all of them?

A. Yes.

Mr. Moore: At this point, with your indulgence, Mr. Watson, I would like Mr. Shaw to take the documents.

Mr. Watson: Yes.

Mr. Shaw: Mr. Watson, we are going to have Mr. Edgerton to give us these documents so we can mark them for identification.

Mr. Watson: Yes.

Mr. Shaw: We will ask for them in the order in which they have been subpoenaed.

Mr. Watson: Surely.

Mr. Shaw: We will start with the distributors first, Mr. Edgerton, and if you have the agreement for a John L. Boitano, I will take that one.

The Witness: Can I ask a question off the record?

(Discussion off the record.)

[fol. 56] Mr. Moore: Stipulation of authenticity.

The documents submitted in the taking of a deposition of A. D. Edgerton on July 23, 1959, and marked Plaintiff's Exhibits Edgerton 1 through 23, inclusive, are true copies of original agreements between The White Motor Company and the distributor, direct key dealer, or direct dealer whose name appears as party to each such agreement.

Each such exhibit may be offered in evidence during the trial of this case as if it were the authenticated original. Any objection for want of authentication or for want of production of the original is waived but no stipulation is being made as to the admissibility of all or any part of any exhibit, over objection on any other ground.

By Mr. Shaw:

Q Mr. Edgerton, we will now take those agreements that you submitted in response to the subpoena listed under "Distributors" and we will take them one by one. The first one we will take is John L. Boltano.

A. Do you want to read the date off, too, so we can identify them, because there are a few errors in dates?

Q. January 1, 1955.

A. Yes.

[fol. 57] Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 1.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 1.)

By Mr. Moore:

Q. I would like to ask this. The subpoena asked for those documents including price lists, appendices, and amendments.

A. The price lists are not here because we do not maintain or hold the price lists in the file. The price list has a stub, and the stub is signed by the distributor showing that he received it, and we keep that on file.

Q. But any amendments to that agreement would be included?

A. Amendments right to the present are here.

Mr. Shaw: Coomer Sales, Inc., January 2, 1958. This will be marked Plaintiff's Exhibit Edgerton No. 2.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 2.)

Mr. Shaw: The next one will be Gary White Sales & Service, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 3.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 3.)

Mr. Shaw: Willey White Truck Company, January 1, [fol. 58] 1955. This will be marked Plaintiff's Exhibit Edgerton 4.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 4.)

Mr. Shaw: Fremont White Truck Sales & Service, July 2, 1936. This will be marked Plaintiff's Exhibit Edgerton 5.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 5.)

Mr. Shaw: Sutton-White Truck Company, January 2, 1957. This will be marked Plaintiff's Exhibit Edgerton 6.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 6.)

Mr. Shaw: Condon Motor Company, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 7.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 7.)

Mr. Shaw: Dermody White Truck Company, Inc., March 25, 1958.

The Witness: Here there obviously is a typographical error or something because the contract that we have is [fol. 59] dated January 1, 1955. We have no such contract for March 25, 1958.

Mr. Watson: We thought that was a clerical mistake so we brought this one.

Mr. Moore: Where is the dealer or distributor location?

The Witness: State of Michigan, Grand Rapids.

Mr. Watson: We did exactly what you are going to do,

Mr. Moore: We checked it up to see whose mistake it was.

Mr. Moore: Would you repeat your remark with regard to that?

The Witness: The contract that we have in the file relating to Dermody White Company, Inc., is dated January 1, 1955, not March 25, 1958.

Mr. Moore: There has been no contract to replace that one.

The Witness: No.

Mr. Moore: We will accept the document you are producing in lieu of the one that we requested by date.

Mr. Watson: I think it is just a clerical mistake.

Mr. Moore: Yes, by us.

[fol. 60] Mr. Watson: Yes, in typewriting.

Mr. Moore: Yes.

Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 8.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 8.)

Mr. Shaw: Bracken Company of New Hampshire, Inc., August 1, 1956.

The Witness: The contract we have in our file is dated August 23, 1956.

Mr. Moore: We will accept that agreement.

Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 9.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 9.)

Mr. Shaw: North Jersey White Autocar, Inc., January 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 10.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 10.)

Mr. Shaw: Midway Garage & Service, Inc., July 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 11.

[fol. 61] (The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 11.)

Mr. Shaw: Ringler Motors, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 12.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 12.)

Mr. Shaw: Carl Mayr d.b.a. Poplar White Equipment Company, January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 13.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 13.)

Mr. Shaw: Baumert-Moran Sales Company, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 14.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 14.)

Mr. Shaw: Perry Fay Motors, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 15.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 15.)

Mr. Shaw: Parker White Trucks, Inc., January 1, 1955. [fol. 62] This will be marked Plaintiff's Exhibit Edgerton 16.

(The document was marked, for identification, Plaintiff's Exhibit Edgerton 16.)

Mr. Shaw: Mr. Edgerton, we will now accept the direct key dealer agreements. Regalia Machine Works, April 1, 1956.

The Witness: The date on our contract, our file is July 16, 1956, as to Regalia Machine Works.

Mr. Moore: That is the latest agreement you have with them?

The Witness: Yes.

Mr. Moore: We will accept that.

Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 17.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 17.)

Mr. Watson: You know that is the latest, do you?

The Witness: Yes, because it has the amendments in here. That is right.

Mr. Shaw: Raftery's Garage, January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 18.

(The document referred to was marked, for identification, [fol. 63] Plaintiff's Exhibit Edgerton 18.)

Mr. Shaw: King White Truck Sales, July 1, 1958. This will be marked Plaintiff's Exhibit Edgerton 19.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 19.)

Mr. Shaw: Mr. Edgerton, we will now take the direct dealers' agreements.

Carl Anderson, d.b.a. Harold Anderson Garage, January 1, 1955.

The Witness: Off the record?

Mr. Moore: Yes.

(Discussion off the record.)

Mr. Shaw: The last agreement we take under the direct key dealers will be Bailey White Trucks. We will take that agreement now rather than Harold Anderson. This will be marked Plaintiff's Exhibit Edgerton 20.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 20.)

Mr. Shaw: Mr. Edgerton, we will go to the direct dealers now. Harold Anderson d.b.a. Harold Anderson Garage, January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 21.

(The document referred to was marked, for identification, [fol. 64] tion, Plaintiff's Exhibit Edgerton 21.)

Mr. Shaw: L. C. Hudson & Company, Inc., January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 22.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 22.)

Mr. Shaw: West End Auto Sales & Service, January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 23.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 23.)

Mr. Moore: Off the record.

(Discussion off the record.)

Mr. Moore: The documents submitted in the taking of a deposition of A. D. Edgerton on July 23, 1959, and marked Plaintiff's Exhibits Edgerton 24 through 35, inclusive, are true copies of original agreements approved by The White

Motor Company as indicated thereon between the distributor and key dealer, dealer, or metropolitan dealer whose names appear as parties to each such agreement.

Each such exhibit may be offered in evidence during the trial of this case as if it were the authenticated original. Any objection for want of authentication or for want of production of the original is waived but no stipulation is [fol. 65] being made as to the admissibility of all or any part of any exhibit over objection on any other ground.

Mr. Shaw: Mr. Edgerton, we will now take the key dealer agreements, Ochoa Bros., January 1, 1957.

The Witness: Could I ask a question off the record?

(Discussion off the record.)

Mr. Shaw: Mr. Edgerton, we will take the key dealer agreement between the Sutton-White Truck Company and Ochoa Bros., and this will be marked as Plaintiff's Exhibit Edgerton 24.

(The exhibit referred to was marked, for identification, Plaintiff's Exhibit Edgerton 24.)

The Witness: The date being January 1, 1957.

Mr. Shaw: We will now take the agreement between Baumert-Moran Sales Company, Inc., and Samuel Fishkin & Son, Inc., dated January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 25.

(Document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 25.)

Mr. Shaw: Condon Motor Company and Sibley Sales & Service.

The Witness: Condon Motor Company and Sibley Sales [fol. 66] & Service, January 1, 1955.

Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 26.

(Document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 26.)

Mr. Shaw: We will now take the agreement between Dermody White Truck Company, Inc., and N & K Service

& Parts Company, January 24, 1957. This will be marked Plaintiff's Exhibit Edgerton 27.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 27.)

Mr. Shaw: The agreement between Bracken Company of New Hampshire, Inc., and the Decato Motor Sales, Inc., August 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 28.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 28.)

Mr. Shaw: The agreement between North Jersey White Autocar, Inc., and D. A. Motors, January 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 29.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 29.)

Mr. Shaw: The agreement between Midway Garage & [fol. 67] Service, Inc., and Russell F. Dryfuse, d.b.a. Madison Motor Service, July 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 30.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 30.)

Mr. Shaw: The agreement between Ringler Motors, Inc., and J. P. McNelly Company, October 1, 1957. This will be marked Plaintiff's Exhibit Edgerton 31.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 31.)

Mr. Shaw: Perry Fay Motors, Inc., and B & W Garage, dated January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 32.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 32.)

Mr. Shaw: We will now take the dealers' agreements, Mr. Edgerton.

Poplar White Truck & Equipment Company and Roy S. Carlson, January 1, 1955. This will be marked Plaintiff's Exhibit Edgerton 33.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 33.)

Mr. Shaw: We will now take the metropolitan dealers' agreements. The agreement between Perry Fay Motors, [fol. 68] Inc., and White Motor Service, dated December 15, 1957.

The Witness: Correction. It is White's Motor Service and not White Motor Service.

Mr. Shaw: That's correct. That is typed in there.

The Witness: Yes. The date that we have in our contract is November 27, 1957. However, it was signed and executed on the 15th of December. That's correct.

Mr. Shaw: The date is December 15, 1957, and that is correct.

The Witness: That is correct.

Mr. Shaw: This will be marked Plaintiff's Exhibit Edgerton 34.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 34.)

Mr. Shaw: The agreement between Parker White Trucks, Inc., and Martin Tones dated October 1, 1956. This will be marked Plaintiff's Exhibit Edgerton 35.

(The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 35.)

By Mr. Moore:

Q. Mr. Edgerton, I hand you a document which has been [fol. 69] marked Plaintiff's Exhibit Edgerton 1 and ask you what that document is.

A. This document appears to be a distributor's selling agreement between The White Motor Company and John L. Boitano, White Truck Sales, No. 1 Bridge Street, Petaluma, California.

Q. I would ask you to turn that document over on the reverse side, the back page, and directing your attention to the lower left-hand corner, I ask you what you observe there.

A. I see F-626155.

Q. Do you know what that number signifies?

A. I don't know what F-626-155 actually signifies. I can guess.

Q. We will be happy to have you state what you think that number signifies, Mr. Edgerton.

A. I believe it indicates it is a form number that is used in our print shop indicating the form number and the date of printing.

Q. Do you maintain your own print shop at The White Motor Company?

A. Yes, we maintain a print shop.

Q. That form number which I believe was F-626-155—is that what you read?

A. Yes.

Q. Do you know if that form number appears on all [fol. 70] distributor selling agreements?

A. I have no knowledge.

Q. And are all your distributor selling agreements on printed forms?

A. To my personal knowledge, I don't know.

Q. Do you know if there are any distributor selling agreements which are not on a printed form?

A. I don't know.

Q. Is there any individual in your company who would be qualified to state that?

A. I believe that the director of the Wholesale Division would be more likely to know the answer than I would.

Q. Do you know how many distributor selling agreements are on forms marked F-626-155?

A. No.

Q. To your knowledge, does paragraph 2 as appears in the document marked Plaintiff's Exhibit Edgerton 1 appear in all of your distributor selling agreements?

Mr. Watson: I don't see how the witness can answer that unless he has read them all.

A. The ones that I have given you that I have seen, yes; but I haven't read them all.

Mr. Moore: I will give the reporter a document which I would like to have marked Plaintiff's Exhibit 36.

[fol. 71] (The document referred to was marked, for identification, Plaintiff's Exhibit Edgerton 36.)

Q. Mr. Edgerton, I show you Plaintiff's Exhibit Edgerton No. 36 and ask you if you can identify that document.

A. Yes. I recognize this as a graphic representation of our distribution system as asked for by the Federal Bureau of Investigation, I believe it was, some time in 1957, whereby this information was compiled and put in graphic form and turned over to the Department of Justice through I believe the FBI investigation.

Q. Mr. Edgerton, do you know who compiled the information to prepare that chart?

A. It was compiled in the normal course of business by the clerks and the people in the Department of the Wholesale Division in the normal course of business.

Q. Did you have any connection with the preparation of that chart?

A. No, I just looked it over.

Q. Would you be able to state what the number is that appears in the upper left-hand box on that chart below the words "Distributor Agreement"?

A. The number is 209.

Q. Do you know what that number means?

[fol. 72] A. That would mean as of the date that this was compiled, it would indicate that we had 209 distributors under selling agreements.

Q. Under selling agreements?

A. Yes, under agreement.

Q. Do you use a standard printed form of agreement with your distributors?

A. I don't know in all cases. In the case I am looking at, that is the standard printed form.

Q. Do you know who was responsible for the language which is in the standard printed form before you?

A. I have no idea.

Q. Do you know how long this standard printed form has been in use by The White Motor Company?

A. This specific form here?

Q. Yes.

A. No, I really don't know.

Q. Has it been in existence since you have been secretary of The White Motor Company?

A. This is a printed form—well, let's see. Will you read that question again?

Mr. Moore: Read it, please.

(Question read.)

A. A form similar to this that I am looking at now has [fol. 73] been in existence since I have been secretary, since 1958.

Q. Would you state where that form is prepared?

A. I don't know if I understand what you mean, prepared.

Q. Well, where is it printed?

A. A form, not this form, a form is printed in our White Motor print shop, Cleveland, Ohio.

Mr. Moore: I would like to take a five-minute recess with Mr. Shaw if you gentlemen don't mind.

Mr. Watson: Yes.

(Recess had.)

By Mr. Moore:

Q. At the risk of being redundant, I will ask you this again. Perhaps I have already asked you this question, whether you know how many distributor selling agreements are on printed forms identical to Plaintiff's Exhibit Edgerton 1.

A. I can't answer that. I don't know.

Q. Would there be anyone in The White Motor Company who would know?

A. I really don't know. It is quite a difficult question to answer. The magnitude of it, I don't know of anyone personally who would.

Mr. Watson: I don't think there is anybody. I think they have to read the whole ball of wax, but you see from your [fol. 74] sampling, of course, this is a common form.

Mr. Moore: It would appear then that the only determination that could be made would be to have all the contracts examined, is that correct?

Mr. Watson: I think somebody would have to read them all through because I am pretty sure that there would be some differences.

Mr. Moore: In the printed forms?

Mr. Watson: Yes, there would be a difference in the printed forms.

Is your inquiry directed to those in use now or those in use over a period of 50 years?

Mr. Moore: Those in use during the period of time covered by the Complaint, Mr. Watson, which I believe would be January 1, 1954, or 1955, to June 30, 1958.

Mr. Watson: Yes. Is what you would like to get at how many contracts have certain provisions like these? Is that it?

Mr. Moore: Yes, that's precisely it.

Mr. Watson: I think we can get you the number, the least numbers that have those.

Mr. Moore: Yes. Off the record.

[fol. 75] (Discussion off the record.)

By Mr. Moore:

Q. Mr. Edgerton, the documents which you have produced in response to the subpoena are numbered Plaintiff's Exhibits Edgerton 1 through 35, inclusive. Did all those exhibits come from the files of The White Motor Company?

A. Yes.

Q. Am I correct in understanding, Mr. Edgerton, that you will endeavor to examine your contract with distributors, direct key dealers, dealers, and metropolitan dealers for the purpose of being able to determine whether the standard form contracts are used with all of them or a number of them or what number?

A. Yes, I will undertake that, yes.

Mr. Watson: I am sure there are variations.

Mr. Moore: Then if there are variations, Mr. Edgerton will be prepared to point out what the variations are, is that correct?

Mr. Watson: Yes. This has to do with the printed stuff, doesn't it?

Mr. Moore: Just the printed form, yes.

Mr. Shaw: This deals with those agreements covered in the period of time covered by the Complaint.

The Witness: Which means that some that you have here (fol. 76) are beyond that period, I think. No, I guess not.

Mr. Moore: I think we made an effort to keep them within the period of the Complaint.

The Witness: June 15, 1958.

Q. Since the Complaint has been filed have you to your knowledge changed the printed forms in any of your agreements with distributors, dealers, etc.?

A. To the best of my knowledge, I wouldn't know the real answer. Anything that I know about this, it really isn't in my jurisdiction. I don't know. Now, I can't answer that.

Q. You don't handle the contract preparations or negotiations for White Motor?

A. No, I don't.

Q. Well, who does?

A. That is the Wholesale Division that handles that. That's a section of the Sales Department.

Mr. Watson: You couldn't pick any one person that did that.

Q. What I am getting at is, ~~over~~ legal department or you as counsel or as secretary, your department is not responsible for the preparation of these forms.

A. No.

Q. Do you approve them before they are used?

(fol. 77) A. Not before they are used. We aren't called on to approve them.

Q. I wonder if we understand each other when I say before they are used. You mean you only approve them after a contract has been entered into?

A. You will see my name as secretary, more or less as attesting officer after the parties have signed, which then completes the contract.

Mr. Watson: If there was any legal problem in the opinion of the Sales Department, then they might consult Mr. Edgerton or Mr. Searies or Mr. Rice or they might

consult our office. I think it is a matter of consensus of opinion.

Q. I think that you stated in response to my question that you did not know whether there had been a change since the filing of this action in the printed form provisions, is that correct?

A. I have no knowledge.

Q. Would Mr. Gresham be more familiar with the extent that these forms are used perhaps than you are, Mr. Edgerton?

A. Well, that's his department. I would say that it would be more likely that he would know more about it than I do.

Q. But you are going to be the one to continue the deposition to explain the extent that these printed forms are used?

[fol. 78] A. Yes, I will undertake that.

(Discussion off the record.)

(Deposition continued to August 10, 1959.)

[fol. 79] Monday, August 10, 1959, 2:00 p.m.

601 Public Square Building, Cleveland, Ohio.

Appearances:

As heretofore.

Cross examination (continued).

By Mr. Moore:

Q. If I am correct in understanding what the record shows of our meeting of July 23rd, you promised to undertake an examination of your agreements, Mr. Edgerton, to determine which ones or how many were on the specific types of printed forms in the various categories of distributor or dealer; is that correct?

A. That's correct.

Q. Did you make an examination with respect to that number appearing on the back of the agreements that we talked about, too?

A. Yes, I did.

Q. I remember I suggested that as perhaps being helpful in arriving at some of this other information.

Mr. Edgerton, then, I will show you Plaintiff's Exhibit Edgerton 1 and direct your attention to that number on the back which we referred to before and ask you what the significance of that number is, if you can tell us now.

A. Yes. This number on the back that appears as F-626 [fol. 80] 1-55 indicates it is our Form No. 626. The 1-55 is the actual date that the print was set and the printing was made.

Q. That Form No. F-626 1-55, are all such contracts bearing that number identical in their printed form provisions?

A. Say that again.

Q. Are all the contracts bearing that No. F-626 1-55 identical in their printed form provisions?

A. Yes.

Q. Not the insertions but the printed form provisions?

A. Yes.

Q. How many agreements are there between The White Motor Company and distributors bearing that number F-626 1-55?

A. To my best knowledge and belief, after making an examination of our files and counting the totals of active distributors and cancelled distributors during this period, and I understand from this, the period that we used was January 1, 1955, to June 30, 1958.

Q. That's correct.

A. --the total number with this form was 251, that being Form F-626 1-55.

Q. Do I understand from your answer that some of those have since been cancelled but were in effect during that period of time?

A. That's correct.

[fol. 81] Q. But throughout that period of time there was off and on existing some two hundred and what did you say?

A. There were at least 251 forms executed.

Q. Let's clear up the distributor type and what exceptions are outstanding on the distributor form of agreements.

A. There were two exceptions in this group under F-626. One was the Toledo Truck Sales & Service contract in which the word "White" was deleted and the words "Autocar Only" were added. That was also true of Spina Sales & Service as related to Autocar only, not to White.

Mr. Watson: By "Autocar" you mean Autocar trucks?

The Witness: That's the trademark, yes.

Q. Those two that you cited as exceptions were on this printed form F-626 1-55?

A. Yes.

Q. But they had some exceptions that you now testify to?

A. That's right. And there was another exception that maybe you want to bring in at this time and that's Form F-625, which is known as our Texas form. The Texas form is F-625 1-55, and there are 24 contracts that I found in the files executed on this form.

Mr. Watson: The Texas form is used only in Texas?

[fol. 82] The Witness: That's used only in Texas.

Q. Yes, I understand that.

Do you have a list of the Texas distributors?

A. Yes.

Q. With you?

A. Yes, I do. They are contained right along with all the other lists. This is my paper work as a background (indicating).

Q. For the time being I don't believe that we are interested in the identity of them, but you have that information available?

A. Yes.

Q. I hand you Plaintiff's Exhibit Edgerton 17 which purports to be a direct dealer selling agreement.

A. This is a direct key dealer.

Q. Pardon me, direct key dealer selling agreement.

Referring to the number in the lower left-hand corner on the back of that contract, are all your direct key dealer selling agreements on Form F-631?

A. For this period of January 1, 1955, until June?

Q. Until June 30, 1958.

A. Yes.

Q. Are all those contract forms F-631 identical in their printed form provisions?

A. Yes.

[fol. 83] Q. How many direct key dealer selling agreements on Form F-631 do you have?

A. I found 14 in the files and find that there are four in evidence which I have not examined. I am looking at one now.

Q. Yes. In other words, there is a total of 18?

A. 18.

Q. Are there direct key dealer selling agreements which are not on Form F-631?

A. There may be, I don't know. The ones that I looked at, the official ones in the file, I couldn't find any.

Q. There were no exceptions that you found such as with the distributor selling agreements?

A. No.

Q. I show you Plaintiff's Exhibit Edgerton 21 which purports to be a direct dealer selling agreement, and referring to the number in the lower left-hand corner on the back, which appears to be F-627. I ask you how many agreements you have outstanding on that form, F-627.

A. We have five outstanding on F-627.

Q. Are all forms 625 identical as to their printed form provisions?

A. Yes.

Mr. Watson: Those are outstanding at the present time.
[fol. 84] The Witness: Yes.

Q. Does The White Motor Company have any direct dealer selling agreements which are not on Form F-627?

A. Yes, we do. We have.

Q. How many, might I ask?

A. We have a total of 243 contracts that you refer to as dealer contracts that are contracts between the Diamond T Motor Truck Company and dealers of the Diamond T Truck Company being a wholly owned subsidiary of the White Motor Company. They are on Diamond T Motor Truck Company Form 1804-55A with the exception of Texas which is Form 1804-55AT.

Q. Were these contracts which The White Motor Company assumed when it acquired Diamond T?

A. Not in all cases assumed. White Motor Company acquired Diamond T on April 1, 1958. Some of those contracts were cancelled and some were renewed during this period that we are speaking about until June 30, 1958. Therefore, you will note that the memorandum agreement changes and becomes Diamond T Motor Truck Company from that of Diamond T Motor Car Company during this period.

Mr. Watson: I think I could clarify that. They assumed the agreements of Diamond T Motor Car Company and then as soon as it was practicable, they were superseded by new agreements with the Diamond T Truck Company [fol. 85] which was a new company.

Mr. Moore: Yes. The agreements that you refer to, were they prepared by The White Motor Company or did you just take over the same agreements that had been in existence between Diamond T? That was the point I was trying to get at.

Mr. Watson: We took over the contracts which were in existence with Diamond T Motor Car Company but as soon as practicable they were replaced with new contracts.

Mr. Moore: Were they amended contracts?

Mr. Watson: No, new contracts.

The Witness: New. Naturally, the change in name had to be made because it was a different corporation.

Q. You have stated in the record the form number that those Diamond T contracts are on?

A. Yes.

Q. If it should be to the government's desire to secure copies of those contracts, they would be available?

A. I will be glad to offer them now if you want them.

Q. I don't have any particular desire for them now.

Mr. Watson: May I interrupt once more? There is a [fol. 86] distributor contract that you haven't mentioned.

The Witness: Yes.

Mr. Moore: In connection with Diamond T?

Mr. Watson: Not Diamond T.

The Witness: He didn't ask me that.

Mr. Watson: In connection with Reo cars.

The Witness: That's back on distributors. You see, you asked me if we had any direct-dealer contracts.

Q. Yes?

A. And I answered as to Diamond T. You didn't ask me on the other.

Q. What I didn't ask you is whether you had any distributor selling agreements which were not on this form.

A. That's right.

Q. You indicated exceptions to the form but, well, let's discuss that then. You say you have one distributor agreement which is not on Form F-626 1-55?

A. That's correct. The distributor agreements not on that form, not on Form F-626 1-55, are a total of 130 Reo division distributor selling agreements and they are on Form 3590A, revised 1-57.

Q. Yes. Are there any other distributor selling agreements not on F-626 1-55?

[fol. 87] A. Not that I know of.

I would like to state that there is an exception to even the Reo form and that was a form of Truck Center, Inc., of Boston, which was a typewritten agreement rather than a form, but it followed the form.

And the other exception was Diamond T of Reading wherein "School bus chassis" was added by the typewriter and "Trucks and chassis" were deleted.

Q. Now I show you Plaintiff's Exhibit Edgerton 24, which purports to be a key dealer selling agreement, and referring to the number in the lower-left-hand corner on the back, which appears to be F-682, I will ask you whether all the forms bearing the number F-682 have identical standard form provisions, standard printed form provisions.

A. As to this form, yes, I will answer in the affirmative.

Q. How many key dealer selling agreements do you have bearing Form No. F-682?

A. I don't have that figure or number because this was not direct subsidiaries, of course, of The White Motor Company and, therefore, in going through my files I merely

checked and found that this is the form that is used and given to the distributor to use but it doesn't follow that he necessarily may use it. Therefore, I did not make a tabulation of the number. I think that you already have [fol. 88] that in evidence, anyway.

Q. We have the number of key dealer selling agreements on this Form No. 682.

A. I think so. I think your FBI investigation indicated that you had that.

Mr. Watson: As I understand it, as far as you know, this form was used?

The Witness: As far as I know, this is the form that's used by the distributor of The White Motor Company in its selling agreement with its key dealers.

Q. Does The White Motor Company receive copies of contracts between distributors and key dealers?

A. Generally speaking, yes.

Q. But do you receive copies of all such contracts?

A. That would be hard for me to determine.

Q. The document, Plaintiff's Exhibit Edgerton 24, which you have in your hand, indicates I believe on page 5 that such a contract was approved by officials of White; does it not?

A. Yes, that's right.

Q. Does The White Motor Company have in its files copies of all contracts between distributors and key dealers which it has approved?

A. Yes, yes.

Q. Did you make a count at that time—

[fol. 89] A. I would say with a few exceptions. Sometimes there is a loss in the mail but I mean generally speaking, yes, there would be.

Q. Are you prepared to state how many of such approved contracts you have in your files?

A. No, I am unable to tell you that. It would be very easy for me to count them because I have gone through these files, but I didn't think that you were interested in the number. I thought you were more interested in when I went over the file on this point, in seeing whether they compared with the form, but that's very easy to do.

Mr. Moore: We could always stipulate to that number?

Mr. Watson: Yes.

A. It is in the Exhibit A book, if you have it.

Mr. Watson: We will get that number and furnish it to you.

Q. Well, for purposes of this deposition, at least, key dealer selling agreements bearing the number F-682 have standard form printed provisions which are identical; is that right?

A. Yes.

Q. I will give you Plaintiff's Exhibit Edgerton 33, and referring to the number on the back, what is that number, [fol. 90] Mr. Edgerton?

A. F-713.

Q. Are all the outstanding agreements bearing the form number 713—

A. F-713.

Q. —do they have identical printed form provisions?

A. Yes.

Q. Do you know how many agreements you have bearing that number?

A. How many agreements? You mean how many agreements our distributors have?

Q. Yes, which you have approved.

Mr. Watson: How many of which you have copies.

A. Again I would have to look it up. I can't tell you.

Q. That falls into the same category as the key dealer agreements, is that right?

A. Yes.

Q. But The White Motor Company has on file all of the agreements between the distributors and dealers which it has formally approved?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Finally, I show you Plaintiff's Exhibit Edgerton 34, [fol. 91] and the number on the reverse side of that agreement appears to be F-604, and I ask you if all the contracts bearing the form number F-604 are identical in their printed form provisions.

A. Yes.

Q. Do you know how many agreements there are bearing the number 604?

A. Yes, I think I can answer that. You have in evidence the two of them that we do have.

Q. With respect to references in the various exhibits we have discussed and in the documents produced in response to the subpoena, namely, Plaintiff's Exhibit Edgerton 1 through 35, do you have any knowledge of where the appendices price list referred to in those agreements are produced?

A. To my knowledge, they are in the hands of the distributors and dealers.

Q. Where do they get them from?

A. They get them from us when we first ship after they have been executed. They are sent to the distributor attached.

Q. If those prices are periodically changed, do all the distributors receive new price lists from White Motor at the same time?

A. Yes. They would be on our mailing list and they automatically would receive it.

Q. Is that true of the other categories of dealers, too?

[fol. 92] A. As to dealers, I can't answer that. I don't know.

Q. Perhaps we should take this step by step.

The appendices price lists referred to in the direct key dealer selling agreements, where are they produced?

A. I don't know what you mean by produced.

Q. Where do they come from?

A. Well, they originate with The White Motor Company.

Q. Yes. And direct dealers selling agreements, the appendices price lists referred to in there?

A. That would be The White Motor Company.

Q. With respect to the key dealer and key dealer selling agreements and the appendices price list referred to in there, where do they originate from?

Mr. Watson: I think Mr. Moore is referring to the direct key dealers and direct dealers between The White Motor Company and the dealer or key dealer. Are you not?

Mr. Moore: Wait a minute. Maybe I don't understand.

Mr. Watson: I think there is some confusion.

Q. Maybe we had better go through these category by category rather than mix them up.

A. That's right.

[fol. 93] Q. You say that the price sheets referred to as appendice price lists or price list appendices, which are referred to in the direct key dealer agreements and the direct dealer agreements originate at The White Motor Company; is that correct?

A. Yes, that's right.

Q. What about the appendice price lists referred to in the key dealer selling agreements, where do they originate?

Mr. Watson: That's a direct dealer agreement you have in your hand.

Q. Key dealer. Let's just talk about key dealer.

A. You are talking about key dealer?

Q. Yes. You have a direct key dealer there, I believe?

A. Wait a minute. I am getting mixed up here, I believe. Here we are. Here is a key dealer selling agreement.

Well, in this case the price lists, appendices, are sent out along with this particular selling agreement.

Q. But where did they originate?

A. And given to the distributor.

Q. By whom?

A. The White Motor will give it to the distributor after he has been notified of the key dealer.

Q. Are you saying that after the key dealer contract has been approved—

[fol. 94] A. Yes.

Q. —the distributor will receive from White the appendix price lists?

A. Yes, that's right. That's part of the distribution.

Q. Is that also true of the dealer selling agreement and the price list appendices referred to there somewhere?

A. Yes, that would be true. That would be the same.

Q. White Motor Company originates the price lists referred to as appendix price lists for the dealer selling agreements; is that true?

A. That's correct.

Q. Is that also true of the metropolitan dealer selling agreement?

A. Yes, that would be true for metropolitan.

Q. Mr. Shaw brings to my attention that when we were discussing the key dealer selling agreements, you indicated that you had the figures as to how many there were which you had approved and were in your file; is that my understanding?

A. Yes.

Q. But it is suggested that we didn't pursue that same thing as far as the dealer selling agreements. I assume you have those and can give us those numbers, too?

A. Oh, yes, yes.

Mr. Moore: I don't have any further questions. That's [fol. 95] all as far as we are concerned.

Mr. Watson: We will get those figures and furnish them to you.

Mr. Moore: All right.

[fol. 96] CERTIFICATE OF NOTARY PUBLIC (omitted in printing).

[fol. 97] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

[Title omitted]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—
Filed April 18, 1960

Plaintiff, United States of America, by its attorneys, acting pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves the Court for a summary judgment in favor of the plaintiff.

The ground for granting the motion is that on the basis of undisputed facts, the plaintiff is entitled to judgment as a matter of law:

1. The pleadings, and the deposition of Alfred D. Edgerton with accompanying exhibits, all on file with the Court, establish that the defendant has entered into written contracts with its distributors and dealers: (a) allocating territories and customers in the sale of White trucks; (b) fixing the price to be charged by distributors in the sale of White trucks and parts to dealers; and (c) fixing the price to be charged by White, its distributors and its dealers in the sale of parts to the Federal and state governments and to national and fleet accounts.

2. The established facts are the only material facts, since these admitted facts constitute *per se* violations of the Sherman Act. Each of the aforesaid restraints is severally unreasonable *per se*, and the combination of such restraints is also unlawful *per se*.

[fol. 98] 3. Accordingly, there is no genuine dispute as to any material fact, and plaintiff is entitled to judgment as a matter of law.

Robert B. Hummel, Frank B. Moore, Jr., John D. Skawa, Jr., Attorneys, Department of Justice.

[fol. 99] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Civil Action No. 34,593

[Title omitted]

EXCERPTS FROM BRIEF OF THE DEFENDANT, THE WHITE MOTOR COMPANY, IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed July 7, 1960

[fol. 117] *Argument*

In order to market effectually the defendant's trucks in competition with the trucks of its competitors, the defen-

dant's contracts with its distributors grant to the distributor an exclusive right to sell, in a defined territory, White trucks purchased from the defendant; and the distributor agrees to develop the said territory to the satisfaction of The White Motor Company and not to sell any trucks purchased under the contract except to individuals, firms or corporations having a place of business and/or purchasing headquarters in said territory. The latter agreement is necessary to protect other distributors and dealers engaged in developing the market for White trucks in their respective territories. Each distributor specifically agrees to maintain a sales room and service station adequate for the sale and servicing of White trucks in the distributor's territory and to purchase and display about the distributor's place of business authorized sales and service signs, the number of signs and their location to be determined by mutual agreement, and the distributor further agrees to purchase and keep on display at all times a representative stock of White trucks in keeping with the potential of the said territory, the quantity and models to be determined by mutual agreement, it being provided that it is contemplated that the distributor will carry a stock of White trucks of a value equivalent to one-twelfth of the distributor's estimated annual new truck sales. In return for these agreements of the distributor, which are necessary to assure the defendant that the distributor will effectively market in its territory White trucks in competition with the trucks of the defendant's competitors, it is only fair and reasonable and, in fact, necessary, in order to obtain and retain distributors and dealersable and willing to maintain effective competition with other competitive makes of trucks, that the distributor shall be protected in said distributor's [fol. 118] territory against selling therein by defendant's other distributors, direct dealers or dealers who have not made the investment of money and effort necessary to carry a stock of White trucks adequate to meet the demands of the purchasing public in the said territory and to maintain suitable sales rooms and service stations therein and properly to sell and service White trucks in said territory. The similar provisions in direct dealers' contracts and in contracts between the distributors and their respective

dealers have the same purposes and the same effects. The territorial limitations do, in fact, not unreasonably or substantially restrict competition or trade and commerce but have both the purpose and effect of promoting the business and increasing the sales of White trucks in competition with The White Motor Company's powerful competitors.

[fol. 140] As we shall show at a trial of this case on the merits, the motor truck manufacturing industry is one of the most highly competitive industries in this country. The White Motor Company's trucks are in the most strenuous [fol. 141] competition with trucks manufactured by General Motors Corporation, Ford Motor Company, Chrysler Corporation, International Harvester Company and Mack Trucks, Inc., as well as certain other smaller truck manufacturing companies. The White Motor Company's share of the motor truck business is very small and its highest proportion of any accepted classification of trucks would not be large. The White Motor Company, by no stretch of the imagination, could be said to dominate the market in trucks, or any part thereof. Theoretically, at least, The White Motor Company could market its trucks in either one of two ways. One way is to sell its trucks to the ultimate users through its own sales and service stations, spread throughout the country, and its own employees and agents. This method is feasible only for a very large company able to support a very extensive and costly sales organization. The other method, which is considered by The White Motor Company as the most feasible and perhaps the only feasible way for The White Motor Company to compete effectively against its bigger and more powerful competitors, is through a distributor and or dealer distribution system. In order for this distribution system to function effectively, the distributors and dealers must have adequate sales and service facilities and carry a stock of trucks and parts sufficient to meet the demands of their purchasing public, and, even more, they must operate under conditions which oblige them to devote vigorous and intensive efforts to sell White trucks. They cannot be allowed to spread these efforts too thinly over more territory than they can vig-

orously and intensively work. To prevent this result, it is necessary to confine their efforts to a territory no larger than they have the financial means and sales and service facilities and capabilities to intensively cultivate for the sale of White trucks. If the distributors and dealers are to be held responsible for the energetic pushing of the sale of White trucks in their allotted territory and the furnishing of the financial resources and sales and service facilities necessary therefor, it is only fair and reasonable, and indeed necessary, that The White Motor Company protect its dealers and distributors in their respective allotted territories against the exploitation by other White distributors or dealers, and indeed by the Company itself, of the market for the sale of White trucks in the allotted [fol. 142] territory which is created or developed or maintained by the money, facilities and hard work of the distributor or dealer to whom the territory has been allotted. In order to procure the kind of vigorous and reputable distributors and dealers that will adequately represent The White Motor Company's line of motor trucks, The White Motor Company has to agree that these men shall be exclusive sales representatives in a given territory. Certainly, the able and energetic kind of man necessary to advance the sales of White trucks in a highly competitive market is not going to expend money, time and energy in building up a demand for White trucks in a given area if he does not have the agreement of The White Motor Company that it will not itself step in and undercut him in the territory and that The White Motor Company will not allow any other of its distributors or dealers to come into the territory and scalp the market for White trucks therein. To obtain the maximum number of sales of trucks in a given area, The White Motor Company has to insist that its distributors and dealers concentrate on trying to take sales away from other competing truck manufacturers in their respective territories rather than on cutting each other's throats in other territories. If The White Motor Company is unable to procure the kind of vigorous and reputable distributors and dealers that will adequately represent it in their respective areas, its distributing organization of distributors and dealers

will, slowly but surely, deteriorate and disintegrate, and as surely as the retirement of The White Motor Company from business would reduce competition in the manufacture and sale of trucks, so, just as surely, would the deterioration and disintegration of The White Motor Company's distributing organization reduce competition in the manufacture and sale of trucks. The plain fact is, as we expect to be able to show to the satisfaction of the Court at a trial of this case on the merits, that the outlawing of exclusive distributorships and dealerships in specified territories would reduce competition in the sale of motor trucks and not foster such competition:

[fol. 159] On principle, there is no reason whatsoever why a manufacturer should not have one distributor who is limited to selling to one class of customers and another distributor who is limited to selling to another class of [fol. 160] customers or why a distributor should not be limited to one class of customers and the manufacturer reserve the right to sell to another class of customers. There are many circumstances under which there could be no possible objection to limiting the class of customers to which distributors or dealers resell goods, and there are many reasons why it would be reasonable and for the public interest that distributors or dealers should be limited to reselling to certain classes of customers.

In the instant case, it is both reasonable and necessary that the distributors (except for sales to approved dealers) and direct dealers and dealers be limited to selling to the purchasing public, in order that they may be compelled to develop properly the full potential of sales of White trucks in their respective territories, and to assure The White Motor Company that the persons selling White trucks to the purchasing public shall be fair and honest, to the end of increasing and perpetuating sales of White trucks in competition with other makes of trucks; and it is reasonable and necessary that The White Motor Company reserve to itself the exclusive right to sell White trucks to Federal and State governments or any department or political subdivision thereof rather than to sell such trucks to such

governments or departments or political subdivisions thereof through distributors or dealers, and The White Motor Company should have a perfect right so to do.

Therefore, based both on the decisions of the Federal Courts and on principle, the limitations on the classes of customers to whom distributors or dealers may sell White trucks are not only not illegal per se, but the plaintiff must prove to succeed on its motion for summary judgment, but these limitations have proper purposes and effects and are fair and reasonable and not violative of the antitrust laws as being in unreasonable restraint of competition or trade and commerce.

[fol. 162]

Argument

The provisions in the contracts between the defendant and its distributors or its direct dealers and in the contracts between the defendant's distributors and their respective dealers with respect to the fixing of prices have very limited application and proper purposes and effects and are not, in fact, in unreasonable restraint of trade and commerce or illegal; and while the Supreme Court of the United States has, in certain of its opinions, made broad, sweeping statements that price fixing provisions are illegal per se, such statements must be taken as statements made in connection with the case then before the Court, especially since the Supreme Court has held in the case of two price fixing provisions and the United States District Court for the Southern District of New York has held in the case of another price fixing provision that these price fixing provisions are not illegal as being in unreasonable restraint of competition or trade and commerce.

An examination of the above quoted contractual provisions with reference to prices, of which the plaintiff complains, shows that these provisions apply to two very limited and entirely separate situations. One is that if a distributor exercises his option to appoint dealers under him he must sell new White trucks to his dealers at the same prices as the prices at which The White Motor Company sells such new White trucks to its direct dealers. The purpose of this

provision is to assure the defendant that the distributors' dealers and the defendant's direct dealers get an equal break pricewise. This is both fair and necessary, if the defendant and its distributors are to have satisfied and efficient dealer organizations. It would be intolerable to have the defendant's direct dealers buying trucks at one price and the distributors' dealers buying the same trucks at a different price. The other very limited situation is that [fol. 163] all distributors and dealers must give to "national accounts", "fleet accounts", and Federal and State governments and departments and political subdivisions thereof the same discounts on parts and accessories as the defendant gives to said "national accounts", "fleet accounts" and Federal and State governments and departments and political subdivisions thereof. The purpose of this provision is so that the defendant may be assured that "national accounts", "fleet accounts" and Federal and State governments and departments and political subdivisions thereof, which are classes of customers with respect to which the defendant is in especially severe competition with the manufacturers of other makes of trucks and which are likely to have a continuing volume of orders to place, shall not be deprived of their appropriate discounts on their purchases of repair parts and accessories from any distributor or dealer, with the result of becoming discontented with The White Motor Company and the treatment they receive with reference to the prices of repair parts and accessories for White trucks. It is common knowledge that probably nothing will make the owner of a motor vehicle so peeved as to be overcharged for repair parts and accessories.

It will be noted that there are no provisions in the contracts between the defendant and its distributors or direct dealers or in the contracts between the distributors and dealers with reference to fixing prices except the provisions hereinabove quoted. *There are no provisions whatsoever in the contracts with reference to the prices that the purchasing public shall pay for White trucks.* No claim could fairly be made that the contracts embody a "price-fixing scheme" for White trucks.

About two-thirds of the distributors sell directly to the public without appointing dealers for a part or all of the

distributor's territory, and the provisions governing the prices that distributors shall charge their dealers for trucks apply to less than 5 per cent of the trucks purchased by the distributors from The White Motor Company. These provisions, as hereinabove indicated, are fair and reasonable, and work no real restraint on competition or on trade and commerce. The provisions serve only to relieve the defendant from just complaints of its direct dealers or of its distributors' dealers that they have been or are being discriminated against.

[fol. 164] The above quoted provisions with reference to the sale of parts and accessories to "National Accounts", "Fleet Accounts" and Federal and State governments and departments and political subdivisions thereof amount merely to an agreement to give to these classes of customers their proper discounts. In a way this affects the prices which these classes of customers have to pay for such parts and accessories, but it affects, as a practical matter, only spare and repair parts and accessories and it affects only the discounts to be given to these particular classes of customers. The provisions are necessary if the defendant's future sales to "National Accounts", "Fleet Accounts" and Federal and State governments and departments and political subdivisions thereof, in competition with other truck manufacturers, are not to be seriously jeopardized. These provisions could hardly be fairly understood to constitute a "price-fixing scheme" in the usual meaning given to the phrase.

We, therefore, feel certain that we can establish, to the satisfaction of the Court, at a trial of this case on the merits, that whatever restraints these limited provisions with regard to prices cause to competition or trade and commerce are trivial and theoretical and reasonable.

• • • • • • •

[fol. 184]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION
 Civil Action No. 34593

UNITED STATES OF AMERICA, Plaintiff,

v.

THE WHITE MOTOR COMPANY, Defendant.

MEMORANDUM ON GOVERNMENT'S MOTION FOR SUMMARY
 JUDGMENT—April 21, 1961

Kalbfleisch, J.

This action was instituted June 30, 1958, by the United States under Section 4 of the Sherman Act (15 U.S.C.A., 4), charging that, beginning on or about January 1, 1955, defendant, The White Motor Company, hereinafter called White, or defendant, and certain co-conspirators consisting of its various dealers and distributors, have engaged in an unlawful combination and conspiracy in violation of Sections 1 and 3 of the Act (15 U.S.C.A., 1, 3).

The amended complaint charges that White, its distributors and dealers have combined and conspired to restrain interstate commerce by entering into agreements whereby: each distributor and dealer will sell White trucks only to dealers or other buyers who have a place of business or purchasing headquarters within the distributor's or dealer's assigned territory, (Complaint, par. 17(a)); if distributors or dealer sell White trucks outside their specified assigned territories they are obliged to pay certain sums of money to the dealers or distributors in whose territories such White trucks are first registered or placed in initial service, (Complaint, par. 17(b)); distributors and dealers will not sell White trucks to others for resale, (Complaint, par.

17(c)), or to any Federal or State Government or any [fol. 185] department or political subdivision thereof, such sales being reserved exclusively by White for direct sales, (Complaint, par. 17(d)); distributors will sell White trucks and parts to dealers at prices fixed by White, (Complaint, par. 17(e)); and distributors and dealers will sell White parts to customers designated by White as National Accounts, Fleet Accounts, and to Federal and State Governments at prices fixed by White, (Complaint, par. 17(f)). The Government charges that White is continuing and will continue the offenses alleged unless enjoined. The relief requested is that White be perpetually enjoined from continuing the alleged conspiracy and from continuing or renewing any of the provisions of its contracts fixing resale prices of White trucks and parts or imposing limitations or restrictions on the territories within which or persons to whom White distributors and dealers may sell trucks.

Defendant has admitted most factual allegations but has denied all charges of illegal conduct. The Government moved for summary judgment on the basis of the pleadings, defendant's answers to interrogatories, the deposition of the defendant's secretary, and accompanying exhibits consisting of representative copies of the contracts and a White distributor and dealer organization chart.

Under Rule 56(c), Federal Rules of Civil Procedure, a motion for summary judgment "shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

From the pleadings and exhibits the Court finds that:

Defendant is an Ohio corporation with its principal place of business at Cleveland. (Complaint, par. 3, Answer, par. 3.) It manufactures White and Autocar trucks and truck parts, hereinafter referred to as White trucks and parts, at Cleveland, Ohio, and Exton, Pa., which are sold throughout the United States and the District of Columbia. (Complaint, par. 7, 12, Answer, par. 7, 12.)

[fol. 186] After manufacture, White trucks and parts are sold through over two hundred persons, firms or corporations designated by White as "franchised distributors."

hereinafter called distributors. Distributors, in turn, sell White trucks and parts at wholesale to over eighty franchised dealers and others. The term "dealer," as used herein, includes the terms "key dealer," "metropolitan dealer," and "dealer" and means any person, firm or corporation so designated by a distributor, with the approval of White, as a retail seller of White trucks and parts. Dealers purchase White trucks and parts from distributors. The term "direct dealer," includes the more than twelve "direct key dealers," "direct metropolitan dealer," and "direct dealers," which are persons, firms or corporations so designated by White as retail sellers of White trucks and parts, to whom White sells its trucks and parts directly. Distributors, dealers and direct dealers are located throughout the United States and the District of Columbia. (Complaint, par. 9, 10, 12, 13; Answer, par. 9, 10, 12, 13; Plaintiff's Exhibit 36.)

In addition to selling through distributors, dealers and direct dealers, defendant sells White trucks and parts directly to consumers, some of whom are designated as "National Accounts," and to various governmental divisions designated herein as "Government Accounts." (Complaint, par. 12, 13, 14; Answer, par. 12, 13, 14.)

There is a continuous flow in interstate trade and commerce of White trucks and parts from White's manufacturing plants in Ohio and Pennsylvania, through distributors, dealers and direct dealers, to consumers located throughout the United States and the District of Columbia, and from White manufacturing plants in Ohio and Pennsylvania and its sales and service branches directly to consumers located throughout the United States and the District of Columbia, some of which are, sometimes designated "National Accounts," and the sales to some of which are sometimes called "Government Sales." (Complaint, par. 14; Answer, par. 14.)

[fol. 187] White is one of the leading United States manufacturers of medium to heavy duty trucks and parts therefor. (Complaint, par. 15; Answer, par. 15.)

The total volume of sales of White trucks by defendant to its various classes of customers was \$102,928,000 in 1955, \$116,110,000 in 1956, \$127,471,000 in 1957, and \$92,699,000

during the first seven months of 1958. (Defendant's Answer to Interrogatory No. 7, Ex. J, more fully set forth in Appendix A of this memorandum.)

Total sales of White truck parts by defendant in each of the years 1955, 1956, and 1957 exceeded \$41,000,000 and were over \$25,000,000 for the first seven months of 1958. (Defendant's Answer to Interrogatory No. 8, Ex. J-1.)

Sales of White truck parts by defendant to the United States Government amounted to \$2,755,000 in 1955, \$915,000 in 1956, \$475,000 in 1957, and \$761,000 for the first seven months of 1958. (Defendant's Answer to Interrogatory No. 8, Ex. J-1.)

The Court further finds that:

At the deposition of Alfred Dixon Edgerton, Secretary of White, copies of thirty-five contracts were authenticated and identified as being representative of all of the various forms of agreements used by defendant throughout its distribution system during the period involved which contain the clauses relevant to this action. (Tr. 28-40.)

Exhibits 1-16, inclusive, consist of *Distributor's Selling Agreements*, Form 626, at least 251 of which were executed or in effect during the relevant period. The printed portions of all of the Form 626 contracts are identical. (Tr. 29, 30.) (It is noted that Exhibit 2 bears the form number 604 but, in view of the testimony and by comparison of the documents, it is apparent that the last page bearing the form number 604 is that of another exhibit and that Exhibit 2 is Form 626.)

Exhibits 17-20, inclusive, consist of *Direct Key Dealer Selling Agreements*, Form 631, eighteen of which were executed or in effect during the relevant period. The printed portions of all of the Form 631 contracts are identical. (Tr. 31.)

[fol. 188] Exhibits 21-23, inclusive, consist of *Direct Dealer Selling Agreements*, Form 627, five of which were outstanding during the relevant period. The printed portions of all of the Form 627 contracts are identical. (Tr. 32.)

Exhibits 24-32, inclusive, consist of *Key Dealer Selling Agreements*, Form 682, approximately sixty-two of which were in effect during the relevant period. (Ex. 36.) The printed portions of all Form 682 contracts are identical. (Tr. 36, 37.)

Exhibit 33 consists of a *Dealer Selling Agreement*, Form 713, approximately twenty-two of which were in effect during the relevant period. The printed portions of all Form 713 contracts are identical. (Tr. 39.)

Exhibits 34 and 35 consist of *Metropolitan Dealer Selling Agreements*, Form 604, of which two were outstanding during the relevant period. Printed portions of all Form 604 contracts are identical. (Tr. 40.)

Exhibit 36 consists of a graphic representation of White's distribution system prepared in the normal course of business by White for, and at the request of, the Federal Bureau of Investigation. It is initialed and dated "10/22/57" and indicates the number of White's distributors, dealers and direct dealers and their relationships to each other. (Tr. 20.)

White is a party to all selling agreements with distributors, direct key dealers, direct metropolitan dealers, and direct dealers. White also is a party to all selling agreements between its distributors and key dealers, metropolitan dealers, and dealers, its approval and signature being necessary to validate the agreements.

White provides standard form selling agreements which its distributors are required to use when entering into contracts with key dealers, metropolitan dealers and dealers. (Par. 9, Distributor Selling Agreement, Form 626.)

[fol. 189]

DISTRIBUTOR SELLING AGREEMENTS

The Court further finds that:

Paragraph I of the Distributor Selling Agreements, Form 626, provides:

"1. *Selling Privilege and Territory.* Distributor is hereby granted the exclusive right, except as hereinafter provided, to sell during the life of this agreement, in

the territory described below, White and Autocar trucks purchased from the Company hereunder." (Hereafter, in each contract is inserted a description of a different geographical area, usually in terms of subdivisions of states or counties.)

In addition to the geographical limitations, certain of the seventeen Distributor Selling Agreements submitted to the Court in connection with this motion contain the following selling restrictions:

Exhibit 1, between White and John L. Boitano White Truck Sales, of Petaluma, Calif., prohibits the distributor from selling "fire truck chassis to the State of California and all political subdivisions thereof."

Exhibit 4, between White and Willey White Truck Co., of Terre Haute, Ind., prohibits that distributor from selling to "Eastern Motor Express, Inc., Vigo Tractor Rentals, Inc., and/or any subsidiary or affiliated companies."

Exhibit 5, between White and Fremont White Truck Sales and Service, of Fremont, Ohio, permits that distributor to sell in Seneca County only to the "account of Paul Gilmore, Inc."

Exhibit 6, between White and Sutton-White Truck Company, of Sacramento, Calif., prohibits that distributor from selling "fire truck chassis to the State of California and all political subdivisions thereof."

Exhibit 11, between White and Midway Garage & Service, Inc., of Monroeville, Ohio, prohibits that distributor from selling to "Mohawk Motor, Inc., and Paul Gilmore, Inc." in Seneca County.

Exhibit 13, between White and Carl Mayr, d.b.a. Poplar White Truck & Equipment Co., of Erie, Pa., permits that distributor to sell in Warren County to the "Account of Hammond Iron Works only."

[fol. 190] Paragraph 2 of the Distributor Selling Agreements provides:

"Merchandising Agreement. Distributor agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and or purchasing headquarters in said territory.

"Distributor agrees not to sell nor to authorize his dealers to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct key dealers, and direct dealers, and Distributor's key dealers and dealers are excepted throughout this paragraph.) Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing. Distributor further agrees to maintain a sales room and service station adequate for the sale and servicing of White and Autocar trucks in said territory and to purchase and display about his place of business authorized sales and service signs, the number of signs and their location to be determined by mutual agreement."

Paragraph 9 of the Distributor Selling Agreements provides:

"Dealer Appointments. Distributor may, in order to further the sale thereof, appoint key dealers or dealers to sell and service White trucks and White parts within his territory, the key dealers or dealers so appointed and their locations to be subject to Company's approval. For this purpose Distributor shall use only the Company's standard forms--"White Key Dealer Selling Agreements" and/or "White Dealer Selling Agreement." Distributor will give Company ad-

¹ See below with respect to Dealer Selling Agreements

vance notice of the cancellation of any such key dealer or dealer agreement."

[fol. 191] Paragraph 10 of the Distributor Selling Agreements provides:

"Wholesale Override on Chassis Sales to Key Dealers.
In the event Distributor sells at wholesale to any of his key dealers any new White standard truck listed in 'Price List—Appendix A' or 'Price List—Appendix B' and purchased hereunder, Company agrees to allow Distributor an amount which shall be called 'Override' in addition to the discounts provided for in Article 5 above and the 'Annual White and Autocar Truck Bonus' provided for in Article 7 above. The amount of the override shall be that specified for each model of new White truck listed in 'Price List—Appendix A' and 'Price List—Appendix B.' * * *

"The override referred to in this section shall be paid to Distributor within thirty days after the receipt by Company's designated office of such report, subject, however, to the following conditions:

- (a) that with respect to all the trucks so reported sold, all the terms, provisions and requirements of this Agreement and of the Key Dealer Selling Agreement and particularly as to standard prices and discounts, shall have been complied with and performed."

Paragraph 13 of the Distributor Selling Agreements provides:

"National Account and Government Sales. Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a 'National Account,' as well as to the Federal or any State Government, or any department or political subdivision thereof, without any obligation whatever on the part of Company to Distributor except as hereinafter provided."

Paragraph 15 of the Distributor Selling Agreements provides:

"Parts Sales to National and Fleet Accounts. Distributor agrees to extend to firms and corporations, and subsidiaries of the latter, designated by Company as 'National Accounts' or 'Fleet Accounts,' and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed the aforementioned accounts by Company."

[Vol. 192] Paragraph 21 of the Distributor Selling Agreements provides:

"Distributor Not Company's Agent. It is not the intent that Distributor possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to Company's product other than contained in Company's standard warranty."

Paragraph 23 of the Distributor Selling Agreements provides:

"Right of Cancellation. This agreement and any renewal or extension thereof may be cancelled and terminated as below provided:

"(d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Company may, at its option, cancel and terminate this agreement at any time without any notice whatsoever to Distributor * * * in case of breach of this agreement on the part of Distributor:"

DEALER AND DIRECT DEALER SELLING AGREEMENTS

The Court further finds that:

Direct Dealer (Form 627), Direct Key Dealer (Form 631), Metropolitan Dealer (Form 604), Key Dealer (Form 682), and Dealer (Form 713), Selling Agreements, all contain the following provisions:

"Selling Privilege and Territory. [Type of dealer] is hereby granted the exclusive right, except as hereinafter provided, to sell during the life of this agreement, in the territory described below, White trucks purchased from Company hereunder." (Then follows in each contract an inserted description of a geographical area, usually a city, county, or portions thereof. Exhibits 17 and 24 also include provisions excluding the sale of fire truck chassis to the State of California and all political subdivisions thereof.)

"Merchandising Agreement. [Type of dealer] agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

[fol. 193] "[Type of dealer] agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, nor to sell such trucks to any Federal or State government or any department, or political subdivision thereof, unless the right to do so is specifically granted by Company in writing."

"Prices, Discounts and Terms." [Company or Distributor] agrees to sell to [Type of Dealer] at Company's factory at Cleveland, Ohio, new White truck standard chassis, including standard equipment and accessories mounted thereon, for cash in par funds at the respective prices and subject to the discounts, terms and provisions or at the [Type of Dealer] net prices and subject to the terms and provisions set forth in [Type of Dealer] 'Price List—Appendix A,' 'Price List—Appendix B,' and the latest issue of Company's sales handbook, all of which are subject to change without advance notice. The 'Price List—Appendix A,' and 'Price List—Appendix B,' will be issued by Company from time to time, and the latest issue thereof shall become and be a part of this agreement."

"*National Account and Government Sales.* Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a 'National Account,' as well as to the Federal or any State Government, or any department or political subdivision thereof, without any obligation whatever on the part of Company to [Type of Dealer]."

"*Parts Sales to National and Fleet Accounts.* [Type of Dealer] agrees to extend to firms and corporations, and subsidiaries of the latter, designated by The White Motor Company as 'National Accounts' or 'Fleet Accounts,' and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed them by The White Motor Company."

"*Parts Sales and Discounts.* [Company or Distributor] will sell to [Type of Dealer] new White parts and accessories listed in the latest revised parts books of The White Motor Company at the prices and discounts and on the terms and conditions as provided in the aforementioned 'Price List—Appendix A,' and (or) 'Price List—Appendix B.'"

[fol. 194] "*Performance of Agreement.* * * * It is further understood and agreed that full performance of this agreement by [Type of Dealer] is a condition precedent to performance thereof by [Company or Distributor] and that any failure by [Company or Distributor] to enforce or to require performance by [Type of Dealer] of any provision of this agreement or to exercise any option herein granted, shall in no way affect the validity of this agreement or impair the right of [Company or Distributor] later on to enforce any such provision or exercise any such option."

In addition to the above clauses, the Direct Dealer and Direct Key Dealer contracts provide that:

"[Type of Dealer] *Not Company's Agent.* It is not the intent that [Type of Dealer] possess any authority or

power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to the products of Company other than contained in the standard warranty of Company."

The Dealer, Metropolitan Dealer and Key Dealer Selling Agreements contain the following provision:

"[Type of Dealer] *Not Agent*. It is not the intent that [Type of Dealer] possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Distributor or The White Motor Company, or make promises or representations relative to products of The White Motor Company other than contained in the standard warranty of said Company."

TRUCK-RESALE PRICES

The Court further finds that:

Distributor Selling Agreements and the Dealer Selling Agreements require all distributors to resell White trucks, standard equipment, accessories and parts to dealers at the prices, discounts and terms established by White. Defendant so admits at page 54 of its Brief.

None of the contracts herein require distributors, dealers or direct dealers to sell White trucks to consumers at specified prices.

[fol. 195]

RESALE PRICES OF PARTS

Defendant admits (Brief, p. 55) (and the contracts under consideration would permit no other construction) that it has entered into agreements with its distributors, dealers and direct dealers, and has required its distributors to enter into agreements with their dealers, fixing and establishing the discounts to be allowed by such distributors, dealers and direct dealers on the sale of White parts and accessories to purchasers designated by White as National Accounts, Fleet Accounts, Federal and State Governments

and departments and political subdivisions thereof, and the Court so finds.

RETAIL SALES BY DISTRIBUTORS

The Distributor Selling Agreements neither prohibit the sale of White trucks and parts by distributors to consumers nor require that distributors sell only to dealers, and since there are approximately 209 distributors but a total of only about 85 dealers (Plaintiff's Ex. 36), the Court finds that distributors sell White trucks, standard equipment, accessories and parts at retail to consumers as well as to dealers.

ALLOCATION OF TERRITORY

The Court further finds that:

All Distributor Selling Agreements provide that the distributors may sell White trucks to dealers approved by White for resale only within the distributor's assigned territory.

The agreements under consideration all contain agreements by the distributors, dealers and direct dealers not to sell White trucks except to individuals, firms or corporations having places of business and/or purchasing headquarters within the territories assigned in their respective contracts.

[fol. 196]

ALLOCATION OF CUSTOMERS

The Court further finds that:

All Distributor, Dealer and Direct Dealer Selling Agreements contain agreements by such distributors, dealers and direct dealers that they will not sell White trucks to any Federal or State government or any department or political subdivision thereof without permission of White.

All Distributor Selling Agreements contain agreements by such distributors that they will not authorize their dealers to sell White trucks to any Federal or State government or any department or political subdivision thereof without permission of White.

All Dealer Selling Agreements contain agreements by the dealers that they will not sell White trucks to any person, firm or corporation for resale without the written consent of their respective distributors.

All Distributor Selling Agreements contain agreements by such distributors that they will not authorize their dealers to sell trucks to any person, firm or corporation for resale without the written consent of White.

All White Distributor and Direct Dealer Selling Agreements contain agreements by the dealers that they will not sell White trucks to any person, firm or corporation for resale (excluding White, its branches, distributors, dealers and direct dealers approved by White) without the consent of defendant.

Certain of the contracts under consideration contain agreements by distributors, dealers or direct dealers that they will not sell White trucks to specific persons, firms or corporations.

MOTION FOR SUMMARY JUDGMENT

The Government contends its motion should be granted because the subject contracts and other admitted facts constitute restraints of interstate commerce which are *per se* unreasonable, and therefore, without more, are illegal. White opposes the motion on the grounds that the facts [fol. 197] herein do not disclose restraints which are illegal *per se* and that it is entitled to introduce at trial other evidence which, it claims, would prove that its various distributor and dealer contracts do not unreasonably restrain trade.

Defendant herein has filed no opposing affidavits, exhibits or depositions but concessions made in an opposing party's brief may be considered in a motion for summary judgment. *Allison v. Mackey*, 188 F. 2d 983 (C.A. D.C. 1951); 6 Moore's Federal Practice, Second Ed., 2081.

Examples of the ultimate facts which defendant would seek to prove at trial are contained in the following excerpt from its Brief, pp. 4, 5:

" * * * the manufacture and sale of trucks is an extremely competitive business, a business as competitive as any business in the United States; that among the defen-

dant's competitors are General Motors Corporation, Ford Motor Company, Chrysler Corporation and International Harvester Company, each much larger and more powerful than The White Motor Company, as well as Mack Trucks, Inc., a corporation about the same size as The White Motor Company; that the competition between the above mentioned truck companies, in fact, fixes the price at which trucks are sold to the consumers; that the provisions of the defendant's contracts, of which the plaintiff complains, do not in fact or in effect unreasonably restrain competition or trade and commerce in the manufacture and sale of trucks, but on the contrary increase such competition by enabling the defendant to have a distributing organization which enables it to compete effectively with its larger and more powerful competitors; that the use of distributors and dealers has been a common method of marketing trucks and other commodities for more than half a century; and that fair and reasonable protection for distributors and dealers is necessary, or the defendant will lose many competent distributors and dealers, thus reducing competition in the sale of trucks; and that the destruction of the class of small business men, known as distributors and dealers, is not to the public interest; and many other facts that, we believe, will establish to the satisfaction of this Court that the contractual provisions, of which the plaintiff complains, have proper purposes and effects and are not unfair or unreasonable in any respect and that such provisions are not in unreasonable restraint of competition or trade and commerce within the inhibitions of the Sherman Antitrust Act."

[fol. 198] Such considerations have no materiality to the issues presently before the Court, namely, whether the admitted facts disclose *per se* violations of the Sherman Act. For if, by "considering the contracts or agreements, their necessary effect and the character of the parties by whom they were made, they were clearly restraints of trade within the purview of the statute, they could not be taken out of that category by indulging in general reasoning as

to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made." *Standard Oil Co. v. United States*, 221 U.S. 1, 65 (1911).

There being no genuine issue as to any material fact upon which the Government relies, the motion for summary judgment may properly be decided on the basis of the pleadings, evidence and briefs now before the Court.

RESALE PRICE MAINTENANCE

Fifty years ago in *Dr. Miles Medical Co. v. Park*, 220 U.S. 373 (1911), the Supreme Court held vertical resale price maintenance agreements to be violations of the Sherman Act. The case arose in this Circuit when a manufacturer of proprietary medicines established a system of contracts for the maintenance of prices fixed by it for wholesale and retail sales of its products and brought an action to enjoin a wholesale druggist, who had refused to enter into such an agreement, from buying Dr. Miles products from others, in violation of their contracts, and then reselling them at cut prices. The Court held that the appellant was not entitled to relief and that the resale price agreements were illegal both at common law and under the Sherman Act. Appellant had urged the business importance of "a standard retail price" and that "confusion and damage have resulted from sales at less than the prices fixed." (Id. 407.) But the Court held that a manufacturer's power "to project his control beyond his own sales must depend, not upon an inherent power incident to production and original ownership, but upon agreement" (Id. 405), that all restraints of trade and interference with liberty of action in [fol. 199] trading were contrary to public policy unless the particular restriction could be shown to be reasonable "in reference to the interests of the parties concerned and reasonable in reference to the interests of the public," * * * while at the same time it is in no way injurious to the public." (Id. 407.) The Court stated that the case was "not analogous to that of a sale of good will, or of an interest in a business, or of the grant of a right to use a process of

manufacture," for the manufacturer "has conferred no right by virtue of which its purchasers may compete with it." Instead, the manufacturer "retains complete control over the business in which it is engaged, manufacturing what it pleases and fixing such prices for its own sales as it may desire." (Id. 407.) The Court found that the agreements were "designed to maintain prices, after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them." (Id. 407.) It held that:

" * * * agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void. They are not saved by the advantages which the participants expect to derive from the enhanced price to the consumer.

"The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic." (Id. 408, 409.)

In *United States v. Colgate*, 250 U.S. 300 (1919), the Court sustained the dismissal of an indictment which the District Court had interpreted as charging only that defendant had exercised its right to specify resale prices and to refuse to deal with anyone who refused to maintain them. In *United States v. Schrader's Son*, 252 U.S. 85 (1920), followed by *Frey v. Cuddeh*, 256 U.S. 208 (1921), and *FTC v. Beech-Nut*, 257 U.S. 441 (1922), the Supreme Court expressly limited the *Colgate* doctrine and reaffirmed *Dr. Miles* as holding that combinations and conspiracies to fix [fol. 200] resale prices and "thereby destroy dealers' independent discretion" (252 U.S., at p. 99) were illegal under the Sherman Act. The principles of the *Dr. Miles* case with respect to resale price maintenance have never been questioned by the Supreme Court and were recently reaffirmed in *United States v. Parke, Davis & Co.*, 362 U.S. 29 (1960), discussed below.

United States v. Bausch & Lomb, 321 U.S. 707 (1944), decided after the passage of the Miller-Tydings Act² presented issues similar to those in the instant case. It was a civil action charging Soft-Lite Lens Co. with violation of Sections 1 and 3 of the Sherman Act by establishing resale price maintenance agreements and certain distribution controls with respect to certain, unpatented pink tinted eyeglass lenses bearing the trademark Soft-Lite, and of which Soft-Lite was the sole distributor. Soft-Lite had introduced pink tinted lenses in the United States and at times had engaged various manufacturers to produce these lenses which it would market. Eventually, Soft-Lite entered into an arrangement with one of these manufacturers, Bausch & Lomb, whereby the latter agreed to produce the tinted lenses exclusively for Soft-Lite, not to compete with Soft-Lite in the sale of such lenses, and not to manufacture them for others. *United States v. Bausch & Lomb*, 45 F. Supp. 387, 390 (S.D. N.Y., 1942). As the business grew, Soft-Lite built up a distribution system which included the "licensing" of selected wholesalers who would adhere to its policies, including resale only to those retailers "licensed" by Soft-Lite at prices established by Soft-Lite. Retailers were carefully selected and were not expected to quote prices in their advertisements or operate as adjuncts to department or jewelry stores. The District Court found that [fol. 201] while specific, uniform retail prices to consumers were not established by Soft-Lite, retailers were required to maintain prevailing local prices and to charge premium prices over comparable untinted lenses; consequently, retail prices were not freely allowed to find their own competitive levels. Retailers agreed with Soft-Lite to sell only to consumers or patients. Refusal of wholesalers or retailers to observe the sales and price policies established by Soft-Lite, or sales by wholesalers to retailers not approved by Soft-Lite, resulted in the offending wholesalers' or retailers' having their licenses from Soft-Lite cancelled, thus being

² The provisos now contained in Section 1 of the Sherman Act (15 U.S.C.A., 1), resulting from legislation known as the Miller-Tydings Act, exempt certain resale price maintenance agreements from the statute's operation.

no longer entitled to receive Soft-Lite lenses. In its advertising, Soft-Lite stressed that it was protecting its approved retailers from competition of "unethical practitioners and price cutters," and each participant knew he was a part of a larger system. (45 F. Supp., at 392, 393, 397.)

The District Court concluded that Soft-Lite's distribution system was in violation of the letter and spirit of Sections 1 and 3 of the Sherman Act. Judge Rifkind said, at page 395:

"The principle has long been established that the Sherman Act condemns an agreement between a distributor and a group of wholesalers to boycott all retailers not approved by the distributor and to charge a uniform price to all retailers who are approved." (Citing cases.)

The District Court held that the exclusive manufacturing arrangement between Soft-Lite and Bausch & Lomb was not illegal and, the Supreme Court being equally divided on this issue, its dismissal of Bausch & Lomb was affirmed.

In the Supreme Court, when Soft-Lite admitted that its retail license provisions, binding dealers to sell (1) at locally prevailing prices and (2) only to the public, constituted illegal restraints, the Supreme Court said:

"Our former decisions compel this conclusion. Price fixing, reasonable or unreasonable, is 'unlawful *per se*.' (Citing cases.) The retailer's price to his customer is the single source of stable profits for all handlers." 321 U.S., at pp. 719, 720.

[fol. 202]. The Court also held that Soft-Lite's agreements with its wholesalers to maintain prices and restrict customers violated Sections 1 and 3 of the Sherman Act:

"Soft-Lite is the distributor of an unpatented article. It sells to its wholesalers at prices satisfactory to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. A distributor of a trademarked article may not lawfully limit by agreement, express or implied, the price

at which or the persons to whom its purchaser may resell, except as the seller moves along the route which is marked by the Miller-Tydings Act. *Dr. Miles v. Park*, 220 U.S. 373, 404. Even the additional protection of a copyright, . . . or of a patent, . . . adds nothing to a distributor's power to control prices of resale by a purchaser. The same thing is true as to restriction of customers." *Id.* 721.

And, at page 723, the Court said:

"So far as the wholesalers are concerned; Soft-Lite and its officers conspired and combined among themselves and with at least some of the wholesalers to restrain commerce by designating selected wholesalers as subdistributors of Soft-Lite products, by fixing resale prices and by limiting the customers of the wholesalers to those recommended by the wholesalers and approved by Soft-Lite—all in violation of the Sherman Act."

Recently, the Supreme Court had occasion to consider how far a manufacturer may go in regulating resale prices and distribution policies of its wholesalers and retailers. In *United States v. Parke, Davis & Co.*, 362 U.S. 29 (1960), a manufacturer of pharmaceuticals was charged with violation of Sections 1 and 3 of the Sherman Act by combining and conspiring with retail and wholesale druggists in Richmond, Va., and the District of Columbia to maintain wholesale and retail prices of its products in areas which had no "fair trade" laws. *Parke Davis* sold to five

³ "Fair trade laws" is a name frequently given to state statutes which permit resale price maintenance agreements. Such contracts, under certain conditions, are exempt from the provisions of the Sherman Act under the Miller-Tydings Act (note 2 above) and from the antitrust laws generally by the McGuire Act, passed in 1952. This Act amended 15 U.S.C.A., 45(a), insofar as relevant here, to provide that:

• "(2). Nothing contained in this section or in any of the Anti-trust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing mini-

[fol. 203] wholesale druggists in the area involved and directly to some large retailers. Before 1936 Parke Davis had announced in its catalogues that it would deal only with wholesalers who adhered to Parke Davis's published resale price schedules and who, in turn, sold only to drug retailers authorized by law to fill prescriptions, and who observed Parke Davis's suggested minimum retail prices. When certain retailers began advertising and selling Parke Davis products at lower than the suggested minimum prices, Parke Davis called on its wholesale and retail customers in the area and announced it would refuse to sell to any retailer who did not observe its suggested minimum [fol. 204] prices, and would refuse to sell to any wholesaler who resold to retailers who did not adhere to the minimum prices. Each wholesaler and retailer was informed that his competitors were being similarly advised. Retailers who would give no assurances of compliance were cut off by Parke Davis, not only as to the branded products being sold below the specified minimum price but as to all Parke Davis's products including drugs used in filling prescriptions.

Failing in these efforts to prevent retail price cutting, Parke Davis next attempted, by means of personal calls

mum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

"(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other."

on wholesalers and retailers, to induce the retailers to refrain only from advertising discount prices. This plan was successful for a short time, but soon Parke Davis abandoned all efforts to prevent cut-price advertising and selling.

At the close of the Government's case, the District Court had dismissed the action on the ground that Parke Davis's activities were properly unilateral and sanctioned by law under the doctrine of *United States v. Colgate*, 250 U.S. 300. The Supreme Court reversed, again reaffirming the *Dr. Miles* case and pointing out, as it has been required to do many times over the years, the narrowness of the *Colgate* doctrine. At page 44, in discussing a manufacturer's unilateral refusal to deal with customers not adhering to its resale price policy, the Court said:

"True, there results the same economic effect as is accomplished by a prohibited combination to suppress price competition if each customer, although induced to do so solely by a manufacturer's announced policy, independently decides to observe specified resale prices. So long as *Colgate* is not overruled, this result is tolerated but only when it is the consequence of a mere refusal to sell in the exercise of the manufacturer's right 'freely to exercise his own independent discretion as to parties with whom he will deal.' When the manufacturer's actions, as here, go beyond mere announcement of his policy and the simple refusal to deal, and he employs other means which effect adherence to his resale prices, this countervailing consideration is not present and therefore he has put together a combination in violation of the Sherman Act."

[fol. 205] But, the Court said:

"The program upon which Parke Davis embarked to promote general compliance with its suggested resale prices plainly exceeded the limitations of the *Colgate* doctrine and under *Beech-Nut* and *Bausch & Lomb* effected arrangements which violated the Sherman Act. Parke Davis did not content itself with announcing its policy regarding retail prices and follow-

ing this with a simple refusal to have business relations with any retailers who disregarded that policy. Instead Parke Davis used the refusal to deal with the wholesalers in order to elicit their willingness to deny Parke Davis products to retailers and thereby help gain the retailers' adherence to its suggested minimum retail prices. The retailers who disregarded the price policy were promptly cut off when Parke Davis supplied the wholesalers with their names. The large retailer who said he would 'abide' by the price policy, the multi-unit Peoples Drug chain, was not cut off. In thus involving the wholesalers to stop the flow of Parke Davis products to the retailers, thereby inducing retailers' adherence to its suggested retail prices, Parke Davis created a combination with the retailers and the wholesalers to maintain retail prices and violated the Sherman Act." (Id. 45.)

The Court noted that if the "resumed adherence" of one of Parke Davis's retail customers to the Parke Davis price schedule, following the interview between the customer's Vice President and Parke Davis's Assistant Branch Manager, showed that the two had entered into a price maintenance agreement "express, tacit or implied, such agreement violated the Sherman Act without regard to any wholesalers' participation." (Id. 45, n. 6.)

White admits that certain of its resale prices are fixed but urges that such agreements have two limited applications which, in its view, have "proper purposes and effects":

"One is that if a distributor exercises his option to appoint dealers under him he must sell new White trucks to his dealers at the same prices as the prices at which The White Motor Company sells such new White trucks to its direct dealers. The purpose of this provision is to assure the defendant that the distributors' dealers and the defendant's direct dealers get an equal break pricewise. This is both fair and necessary if the defendant and its distributors are to have satisfied and efficient dealer organizations. It would be intolerable to have the defendant's direct dealers buying trucks

[fol. 206] at one price and the distributors' dealers buying the same trucks at a different price. The other very limited situation is that 'all distributors and dealers must give to 'national accounts', 'fleet account', and Federal and State governments and departments and political subdivisions thereof the same discounts on parts and accessories as the defendant gives to said 'national accounts', 'fleet accounts' and Federal and State governments and departments and political subdivisions thereof. The purpose of this provision is so that the defendant may be assured that 'national accounts', 'fleet accounts' and Federal and State governments and departments and political subdivisions thereof, which are classes of customers with respect to which the defendant is in especially severe competition with the manufacturers of other makes of trucks and which are likely to have a continuing volume of orders to place, shall not be deprived of their appropriate discounts on their purchases of repair parts and accessories from any distributor or dealer, with the result of becoming discontented with The White Motor Company and the treatment they receive with reference to the prices of repair parts and accessories for White trucks. It is common knowledge that probably nothing will make the owner of a motor vehicle so peeved as to be overcharged for repairs parts and accessories." Defendant's Brief, pp. 54, 55.

The prohibitions of the Sherman Act cannot be evaded by good motives. *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 49 (1912); *Fashion Guild v. F.T.C.*, 312 U.S. 457, 468 (1941); *Associated Press v. United States*, 326 U.S. 1, 16 n. 15 (1945); *Radovich v. National Football League*, 352 U.S. 445, 453, n. 10 (1957).

Nor are combinations fixing maximum prices any less subject to the Sherman Act than those which fix minimum prices for they "cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U.S. 211, 213 (1951).

Defendant, as well as its competitors, must comply with the law. Defendant established its distribution system, and if weaknesses or "intolerable" situations develop, it is within its power to make necessary corrections or revisions in the system within the framework of the law.

[fol. 207] Defendant states that there are no provisions in its contracts "with reference to the prices that the purchasing public shall pay for White trucks," that "the provisions governing the prices that distributors shall charge their dealers for trucks apply to less than 5 per cent of the trucks purchased by the distributors from The White Motor Company," and that "whatever restraints these limited provisions with regard to prices cause to competition or trade and commerce are trivial, theoretical and reasonable." (Defendant's Brief, pp. 55, 56.)

Volume of commerce is immaterial in Sherman Act cases. *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 221 (1940); *United States v. McKesson & Robbins*, 351 U.S. 305, 310 (1956). It "is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. * * * Likewise irrelevant is the importance of the interstate commerce affected in relation to the entire amount of that type of commerce in the United States." *United States v. Yellow Cab Co.*, 332 U.S. 218, 225, 226 (1947).

That the contracts contain no provisions with reference to the specific prices which distributors, dealers or direct dealers shall charge consumers for White trucks has no bearing on the fact that wholesale truck and parts prices and parts prices to certain consumers are fixed by White.

While the defendant has not suggested that the resale price maintenance provisions under consideration fall within the Miller-Tydings or McGuire Act exemptions, it should be noted that the Supreme Court has held that a manufacturer which also acts as a wholesaler is not within those exemptions and therefore may not lawfully enter into resale price maintenance agreements with other wholesalers. *United States v. McKesson & Robbins*, 351 U.S. 305, 312 (1956).

Defendant concedes (Brief, p. 57) that this case does not involve any issue either of sales through bona fide agents

of the manufacturer or of products manufactured or sold under patent licenses as in *United States v. General Electric Co.*, 272 U.S. 476 (1926). (See also provisions of contracts to the effect that distributors, dealers and direct dealers are not White's agents.)

[fol. 208] In the Court's judgment, the provisions of defendant's distributor, dealer and direct dealer selling agreements, which prescribed resale prices and discounts of White trucks, equipment, accessories and parts, or any of them, constitute *per se* violations of Section 1 of the Sherman Act.

ALLOCATION OF TERRITORIES AND CUSTOMERS

The Government contends that since combinations and agreements fixing prices among competitors, which eliminate but a single element of competition, are illegal *per se*, the allocation of territories and of customers must also be illegal *per se*, as all elements of competition among the various selling units involved are thereby eliminated. (Government's Brief, p. 12.)

White's position is that, in order to market its trucks effectively in competition with the trucks of its competitors, it enters into contracts whereby its distributors agree to maintain sales rooms with stocks adequate to sell and service White trucks in their assigned territories, to properly display signs, and maintain adequate supplies of parts, and that the "territorial limitations do, in fact, not unreasonably or substantially restrict competition or trade and commerce but have both the purpose and effect of promoting the business and increasing the sales of White trucks in competition with The White Motor Company's powerful competitors." (Defendant's Brief, pp. 9, 10.)

White urges that to obtain distributors or dealers who are "able and energetic," they must "have the agreement of The White Motor Company that it will not itself step in and undercut [them] and that The White Motor Company will not allow any other of its distributors or dealers to come into the territory and scalp the market for White trucks therein." White further states:

[fol. 209] "To obtain the maximum number of sales of trucks in a given area. The White Motor Company has to insist that its distributors and dealers concentrate on trying to take sales away from other competing truck manufacturers in their respective territories rather than on cutting each other's throats in other territories. If The White Motor Company is unable to procure the kind of vigorous and reputable distributors and dealers that will adequately represent it in their respective areas, its distributing organization of distributors and dealers will, slowly but surely, deteriorate and disintegrate, and as surely as the retirement of The White Motor Company from business would reduce competition in the manufacture and sale of trucks, so, just as surely, would the deterioration and disintegration of The White Motor Company's distributing organization reduce competition in the manufacture and sale of trucks. The plain fact is, as we expect to be able to show to the satisfaction of the Court at a trial of this case on the merits, that the outlawing of exclusive distributorships and dealerships in specified territories would reduce competition in the sale of motor trucks and not foster such competition."

The terms "exclusive contracts," "exclusive territories," or "exclusive dealerships," frequently are used to mean (1) agreements by a manufacturer with its distributors or dealers that the manufacturer will not sell to any others or to others within their respective "exclusive territories," or (2) (as in this case) agreements by distributors and dealers with their manufacturer or supplier that they will not sell to purchasers located outside their respective assigned "exclusive territories." It is most important to keep in mind these conflicting definitions because agreements in the first category have been upheld as reasonable when ancillary to the sale of goods for resale because they protect the vendee's property rights in his resale business from being destroyed or damaged by the actions of his vendor who is in a position to undersell, or establish a competitor of, his vendee. *United States v. Bausch & Lomb*, 321 U.S. 707; *United States v. Paramount Pictures*, 66 F.Supp. 323 (S.D.

N.Y., 1946), judgment modified 334 U.S. 131 (1948); *Schwing Motor Co. v. Hudson Sales Co.*, 239 F.2d 176 (C.A. 4, 1956); *Packard Motor Car Co. v. Webster*, 243 F.2d 418 (C.A. D.C. 1957).

[fol. 210] But the Supreme Court has consistently held that agreements in the second category, allocation of markets among competitors, violate the Sherman Act. Since this case involves only agreements in the second category, we should first consider *United States v. Addyston Pipe & Steel Co.*, 85 F. 271 (C.C.A. 6, 1898), judgment affirmed, decree modified, *Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1899). In that case, a number of manufacturers of cast iron pipe agreed to eliminate competition among themselves. This was accomplished in part by allocating business in certain cities or areas to specific manufacturers. Where several bids were required, as in the case of sales to Government agencies, the defendants agreed among themselves which company would be the low bidder. The trial court sustained defendants' demurrer but the Circuit Court of Appeals, in an opinion by Judge Taft, reversed and ordered a permanent injunction against the combination. Defendants admitted the existence of the agreements but claimed that they were necessary to avoid great losses and ruinous competition which would have carried prices far below a reasonable point. In language peculiarly applicable to this case the Supreme Court asked and answered several questions:

"If dealers in any commodity agreed among themselves that any particular territory bounded by state lines should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory, would not such agreement be regarded as one in restraint of interstate trade? If the price of the commodity were thereby enhanced, (as it naturally would be,) the character of the agreement would be still more clearly one in restraint of trade. Is there any substantial difference where, by agreement among themselves, the parties choose one of their number to make a bid for the supply of the pipe for delivery in another State, and agree that

all the other bids shall be for a larger sum, thus practically restricting all but the member agreed upon from any attempt to supply the demand for the pipe or to enter into competition for the business? Does not an agreement or combination of that kind restrain interstate trade, and when Congress has acted by the passage of a statute like the one under consideration, does not such a contract clearly violate that statute?" (Id. 241.)

The Court went on to hold that the contract and combination violated the statute.

[fol. 211] In *Aper Hosiery Co. v. Leader*, 310 U.S. 469 (1940), Justice Stone, discussing the relation of the Sherman Act to the common law concepts of restraints of trade, noted that agreements to "divide marketing territories [and] apportion customers," along with agreements to fix prices and restrict production, were "illegal and were unenforceable at common law." (Id. 497.) And, at page 493:

"The end sought [by enactment of the Sherman Act] was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury."

United States v. National Lead Co., 63 F.Supp. 513 (S.D. N.Y., 1945), affirmed 332 U.S. 319 (1947), involved a world-wide cartel controlling patents and technological information pertaining to the manufacture of titanium compounds. In maintaining and carrying out the purpose of the cartel, to suppress competition among its members, the parties allocated territories among themselves and refused to license potential customers or classes of customers under the patents except on terms agreed upon by the combination. Of this the District Court said, at page 524:

"This is a case where if not the sole, at least one of the principal objects was 'to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster.' *United States v.*

Addyston Pipe & Steel Co., 6 Cir., 1898, 85 F. 271, 282, 283;"

And, at page 523:

"No citation of authority is any longer necessary to support the proposition that a combination of competitors, which by agreement divides the world into exclusive trade areas, and suppresses all competition among the members of the combination, offends the Sherman Act."

In *United States v. Imperial Chemical Industries*, 100 F.Supp. 504 (S.D. N.Y., 1951), after finding that the defendants had conspired to avoid and prevent competition among themselves and with others by dividing markets in restraint of interstate and foreign commerce, the Court said, at pages 592, 593:

[fol. 212] "In the face of this finding, the law is crystal clear: A conspiracy to divide territories, which affects American commerce, violates the Sherman Act.

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"Territorial division is 'in restraint of trade or commerce,' no less than price fixing. It involves 'the denial to commerce of the supposed protection of competition.' *United States v. Aluminum Co. of America*, 2 Cir., 148 F.2d 416, 428. There is no intimation in any decision that elimination of competition is to be given a more favorable judicial consideration when achieved by the route of territorial division rather than by way of price fixing, or that proof of industry domination is required in one case though not required in the other. (Id. 593.)

Defendant has cited a number of cases which are claimed to stand for the proposition that a manufacturer's agreements with its distributors or dealers which restrict their sales territories are lawful.

The first of these cases, *Phillips v. Iola Portland Cement Co.*, 125 F. 593 (C.C.A. 8, 1903), cert. den. 192 U.S. 606.

(1904), involved a single sale of cement which the defendant jobber had agreed not to ship or sell outside the State of Texas. Sued for breach of contract in refusing to accept and pay for some of the cement, defendant alleged that the agreement violated the Sherman Act and was therefore unenforceable. The agreement was held not to have had any direct or substantial effect upon competition or trade among the states, that other manufacturers competing with plaintiff were free to set their own prices and select their customers, and that, if the agreement did have the effect of restraining defendant from competing with other jobbers and manufacturers beyond the State of Texas, "this restriction was not the chief purpose or the main effect of the contract of sale, but a mere indirect and immaterial incident of it." (Id. 595.) *Phillips* obviously has no bearing on the instant case which is a direct attack on a system of restraints which are in continual operation, not an action for breach of a single contract of sale.

[fol. 213] *Cole Motor Car Co. v. Hurst*, 228 F. 280 (C.C.A. 5, 1915), cert. den. *Tillar v. Cole Motor Car Co.*, 247 U.S. 511 (1918), involved an agent or consignee of the plaintiff automobile manufacturer being sued for money due. The consignee defended on the ground that the contract was illegal in that it restricted the territory in which he could sell. The antitrust question was raised collaterally and involved only the relationship between a manufacturer and a single outlet. Moreover, while White quoted extensively from the *Cole* opinion, at pages 12 and 13 of its brief, it omitted from the content the following two sentences showing that the relationship between the parties was that of principal and agent, not buyer and seller, making the case clearly inapplicable to White:

"It will be seen that it was not a contract which conveyed title to Hurst, and brought his control of the machines under the operation of the Texas law. Surely the Cole Company had the right to determine that its agents should sell its cars at its own price." (Id. 284.)

Sinclair Refining Co. v. Wilson Gas and Oil Co., 52 F.2d 974 (W.D., S.C., 1931) was also a suit for goods sold. The

Court rejected and did not consider a counterclaim based on conduct of defendant which allegedly violated the Sherman Act.

The Federal Trade Commission cases cited by defendant, *B. S. Pearsall Butter Co. v. FTC*, 292 F. 720 (C.C.A. 7, 1923) and *General Cigar Co., Inc.*, 16 F.T.C. dec. 537 (1932), do not bear on the issues of this case.

Another Commission ruling cited by defendant is *Columbus Coated Fabrics Corp.*, CCH Trade Reg. Rep., 1959-60, p. 36,963, a proceeding under Section 5 of the Federal Trade Commission Act (15 U.S.C.A., 45). The complaint charged a manufacturer and two of its distributors with conspiring to restrain competition by:

- "(1) Establishing and maintaining uniform fixed suggested dealer resale prices;
- "(2) Establishing and maintaining exclusive sales territories for distributors;
- "(3) Threatening to, and boycotting certain dealers." (Id. 36,963.)

[fol. 214] The hearing examiner dismissed charges 1 and 2 above but entered a cease and desist order as to charge 3. The dismissal of charges 1 and 2 resulted from finding that there were no agreements embracing such terms, not upon a conclusion that such agreements would be lawful as would be inferred from defendant's brief. Chairman Gwynne, speaking for the Commission, stated, at page 36,964:

"There is no evidence of any agreement, either written or oral, as to these allocations. Nor is there any substantial evidence that Columbus made efforts to require observance or to police the unilateral arrangements it made. * * * It appears also that any distributor or dealer may sell Wall-Tex anywhere he wishes. He can also choose his own customers and is free to handle competing products. In fact, many do handle such products.

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"There is no evidence of any agreement between distributors to enforce Columbus' suggested prices or to enforce their own. Nor is there evidence of agreement among dealers to agree to or to enforce either."

United States v. Paramount Pictures, 66 F.Supp. 323 (S.D. N.Y., 1946), judgment modified, 334 U.S. 131 (1948), involved an issue of the *per se* illegality of agreements (called "clearances") by motion picture distributors with exhibitors not to license other exhibitors in their respective territories to show certain films until after the lapse of specified numbers of days. This case involved restrictions of a different nature from the one at bar, for, as the three-judge District Court held, the granting of clearances when "not accompanied by a fixing of minimum prices, or not unduly extended as to area or duration, affords a fair protection to the interests of the licensee without unreasonably interfering with the interests of the public." (Id. 341.)

Boro Hall Corp. v. General Motors Corp., 124 F.2d 822 (C.C.A. 2, 1942), rehearing denied 130 F.2d 196, cert. den. 317 U.S. 695 (1943), involved the issue of an automobile [fol. 215] manufacturer's requiring that one of its dealers not locate its used car sales outlet except in an area to be agreed upon between the parties, so as not to unduly prejudice other dealers of that manufacturer and distributor. The Court of Appeals affirmed the dismissal of the cause of action as not stating a claim under the Sherman Act. The agreement, or proposed agreement, at issue in *Boro Hall* related only to the location of a place of business and, as the Court noted:

"The plaintiff was always at liberty to sell used cars outside its 'zone of influence' and was only forbidden to establish a used car outlet, lot or salesroom outside this zone." (Id. 197.)

Defendant also relies on *Schanna Motor Co. v. Hudson Sales Co.*, 138 F.Supp. 899 (D.C. Md., 1956), affirmed *per curiam* 239 F.2d 176 (C.A. 4, 1956), and *Parland Motor Car Co. v. Webster*, 243 F.2d 418 (C.A. D.C., 1957). Both were treble damage actions under Sections 1 and 2 of the Sherman Act but neither involved issues other than refusal to

deal: The *Schwing* case was instituted by two former Hudson automobile dealers who charged that the manufacturer entered into an agreement with a third dealer whereby the manufacturer refused to renew plaintiffs' dealer franchises and refused to sell them Hudson automobiles, thus giving the third dealer a "virtual monopoly" of the sale of Hudson automobiles and parts in the City of Baltimore. On motion of defendants, the amended complaint was dismissed. The Court held that the defendant manufacturer was within its rights in exercising discretion as to the parties with whom it wished to deal, citing the *Colgate* case, and others:

"A manufacturer may prefer to deal with one person rather than another, and may grant exclusive contracts in a particular territory." (138 F.Supp. 903.)

The Court, in *Schwing*, recognized that there had been no allegation of a "horizontal conspiracy between competitors" (Id. 905), and commented that if such had been the case "[o]f course the agreement would be invalid . . ." (Id. 906.)

The *Packard* case was brought by a former Baltimore Packard automobile dealer against the manufacturer and two of its officers, charging that Packard had agreed with another dealer, Zell, to terminate the franchises of all [foi. 216] other Packard dealers in Baltimore to give Zell an exclusive contract for that area. The District Court submitted the case to the jury, which returned a verdict for the plaintiff. The Court of Appeals reversed, expressing agreement with the *Schwing* decision, above, and holding that the "fact that any other dealers in the same product of the same manufacturer are eliminated does not make an exclusive dealership illegal; it is the essential nature of the arrangement. The fact that Zell asked for the arrangement does not make it illegal." (243 F.2d 421.) It is apparent that the "exclusive contracts" and "exclusive dealerships" in *Schwing* and *Packard* are contracts in which the vendors (in those cases the manufacturers) agreed with certain of their respective dealers that they would not sell to others or appoint other dealers or agents within specified areas or distances in relation to the dealers' places of

business but that those terms do not apply to the agreements at issue in the instant case whereby vendees (distributors and dealers) agree with their vendors (manufacturer or distributors) not to resell goods purchased to certain classes of customers or outside of their assigned territories.

Reliable Volkswagen & Worldwide Automobile Corp., 182 F.Supp. 412 (D.C. N.J., 1960), charged breach of contract, fraud and other wrongful acts including violation of the Sherman Act. Plaintiff alleged that a foreign manufacturer, its exclusive United States importer, and others, agreed among themselves and with other distributors to sell Volkswagen products only to franchised Volkswagen dealers; that the defendants agreed to limit sales to franchised dealers within the respective exclusive sales territories of the distributors, and that as a result of these agreements plaintiff has been unable to purchase Volkswagen products. The case was before the District Court on defendants' motion to dismiss or for summary judgment. The Court dismissed the eighth cause of action, which had set forth the above Sherman Act allegations. Defendant herein emphasizes Circuit Judge Forman's comment that he was "not persuaded that this system constitutes a *per se* violation of the Sherman Act." (Id. 427.)

[fol. 217] In dismissing the charge, the Court relied, to some extent, on the *Schwinn* and *Packard* cases (discussed above and found to be inapplicable to the instant case) and on *United States v. Bitz*, 179 F.Supp. 80 (S.D. N.Y., 1959), which decision was later reversed, *United States v. Bitz*, 282 F.2d 465 (C.A. 2, 1960). But the real basis for the Court's dismissal of the eighth cause of action in *Reliable Volkswagen* appears to have been not upon a consideration of the legality of defendants' distribution system, but upon its conclusion that the cause of action failed to allege a public injury "or even a private injury," 182 F.Supp. 425, and that it alleged "only a refusal to deal for which in this context the antitrust law provides no remedy." (Id. 427.) Since this construction made dismissal mandatory under the *Colgate* doctrine, the case has no application to White.

For the reasons indicated, defendant's authorities do not sustain the legality of the territorial allocations of its marketing system.

White defends the agreements of its distributors, dealers and direct dealers not to sell to anyone for resale (except to White or other White approved distributors and dealers) as being necessary to "assure itself by the provisions of its contracts that the persons attempting to sell White trucks to the purchasing public shall be men who will deal honestly and fairly with the purchasing public: * * ." (Defendant's Brief, p. 36.)

The provisions of its selling agreements prohibiting distributors, dealers and direct dealers from selling White trucks to Federal or State Governments, or departments or political subdivisions thereof, are justifiable, according to White, because they do not "restrict the competition for government business but on the contrary increase[s] such competition by enabling The White Motor Company to compete for the business on equal terms with, and under as favorable circumstances as, competing manufacturers of trucks." (Defendant's Brief, p. 37.)

The cases cited by defendant, as supporting customer allocation, either involved single contracts or did not present Sherman Act issues and therefore have no bearing on this case.

[fol. 218] *Wilder Mfg. Co. v. Corn Products Co.*, 236 U.S. 165 (1915) was an action for goods sold, which started in the State Courts of Georgia. The purchaser, Wilder, defended on the ground that plaintiff corporation was organized to violate the federal antitrust laws, hence had no legal existence, and that the purchase contract was unenforceable because of a clause to the effect that the goods sold were for defendant's own use and not for resale. The trial court struck out the answer as constituting no defense, the Georgia Court of Appeals affirming. The Supreme Court held that the contract of sale was not inherently illegal because of that clause, and others, so as to bar recovery for the purchase price. There was no issue, and no expression of opinion by the Court, as to whether the resale restrictions constituted a violation of Section 1 of the Sherman Act.

In *Green v. Electric Vacuum Cleaner Co.*, 132 F.2d 312 (C.C.A. 6, 1942), plaintiff manufacturer brought an action for patent and trademark infringement against a rebuilder

of vacuum cleaners. As a defense it was asserted that plaintiff was violating the antitrust laws in attempting to prevent defendant from obtaining its parts. Affirming judgment for the plaintiff, the Court held that directives by the plaintiff to its dealers not to resell its patented parts to persons engaged in rebuilding traded in or junked cleaners were not contracts in unreasonable restraint of trade under the antitrust laws.

P. Lorillard Co. v. Weingarden, 280 F. 238 (W.D. N.Y., 1922), involved a single transaction wherein plaintiff sought to enforce a restrictive covenant against sale within the United States of a quantity of cigarettes sold to defendant at a special price because of their inferior quality. Plaintiff contended that their sale in this country would damage its reputation. The Court held the covenant to be reasonable and that it presented no question of Sherman Act violation.

Fosburgh v. California & Hawaiian Sugar Refining Co., 291 F. 29 (C.C.A. 9, 1923), also involved a single transaction wherein the Court held to be reasonable, and not in violation of the Sherman Act, contractual provisions [fol. 219] enjoining the resale of certain sugar purchased, where such provisions had been made at the suggestion of the United States Government because of the World War I sugar shortage.

In *United States v. Newbury Manufacturing Co.*, 36 F.Supp. 602 (D. Mass., 1941), the Court held to be reasonable a restriction by a vendor, the United States Government, to the effect that certain goods sold be disposed of only in foreign countries.

Chicago Sugar Co. v. American Sugar Refining Co., 176 F.2d 1 (C.A. 7, 1949), cert. den. 338 U.S. 948 (1950), was an action instituted by a sugar distributor against a processor under the Clayton Act and the Robinson-Patman Act. The Court held that long term requirements contracts between a sugar refiner and a manufacturer, whereby the manufacturer agreed to use the sugar solely for its own purposes and not to resell it, was not harmful to competition or in restraint of trade. No Sherman Act question was involved.

In *Bascom Launder Corp. v. Telecoin Corp.*, 204 F.2d 331 (C.A. 2, 1953), cert. den. 345 U.S. 994 (1953), the issue was over an instruction given by the District Judge to the jury in a treble damage action. He had stated that a contract whereby a manufacturer appointed a single distributor to sell to a certain class of customers, and agreed to appoint no other, "amounted to a contract, combination and conspiracy in restraint of trade or commerce in violation of the Sherman Act as a matter of law." (Id. 334.) The Court of Appeals reversed, holding that the instruction had amounted to a directed verdict for the plaintiff, whereas the question was for the jury to decide.

Roux Distributing Co., Federal Trade Commission Dkt. 6636, CCH Trade Reg. Rep. (FTC Complaints, Orders, Stipulations, 1959-1960), par. 27,855, p. 36,923, was a decision by the Commission arising out of an action under Section 5 of the Federal Trade Commission Act, 15 U.S.C.A. 45. Respondent was charged with requiring its wholesale customers to agree to limit their sales to certain classes of purchasers. The statute condemns unfair methods of competition and unfair or deceptive acts or practices in commerce. The Commission held that "a violation of Section [fol. 220] 5 is not shown unless the record contains some evidence of the competitive effect of the practices," (Id. 36,925), and dismissed the complaint after finding no conclusive evidence of previous competition among respondent's customers, which the challenged agreements allegedly had removed. No issues involving the Sherman Act were presented.

White asserts that it does not dominate the truck market and that "the relevant market is not a market for White trucks, as plaintiff seems to assume in its brief, but is the market for trucks of all makes," (Defendant's Brief, p. 70), citing *United States v. DuPont*, 351 U.S. 377 (1956). But *DuPont* was an action under Section 2 of the Sherman Act charging monopolization or attempts to monopolize which necessarily involved questions of relevant market. On the other hand, *Dr. Miles v. Park*, 220 U.S. 373, *United States v. Bausch & Lomb*, 321 U.S. 707, *United States v. McKesson & Robbins Co.*, 351 U.S. 305, *United States v. Parke, Davis*, 362 U.S. 29, to cite but a few cases, make it

abundantly clear that market control is not a material factor in cases involving resale restrictions and that resellers of identical products of a single manufacturer are regarded as being in competition with one another with respect to such sales. See also *United States v. Bausch & Lomb*, 45 F.Supp. 387, 397 (S.D. N.Y., 1942).

White's defense is based on the assumption that a process of justification may be employed to remove from the scope of the Sherman Act restraints which, by their inherent nature, have a direct and immediate effect upon interstate commerce. This theory was discussed at length and rejected in *Standard Oil Co. v. United States*, 221 U.S. 1 (1911), wherein the Court held that a finding that a contract or combination in restraint of trade has a direct and immediate effect on interstate commerce, and the application of the rule of reason, were one and the same thing. It stated, at page 67:

"The confusion which gives rise to the question results from failing to distinguish between the want of power to take a case which by its terms or the circumstances which surrounded it, considering among such circumstances the character of the parties, is plainly within the statute, out of the operation of the statute [fol. 221] by resort to reason in effect to establish that the contract ought not to be treated as within the statute, and the duty in every case where it becomes necessary from the nature and character of the parties to decide whether it was within the statute to pass upon that question by the light of reason."

Individually, White and any of its distributors, dealers or direct dealers might refuse to sell to certain customers or classes of customers but the Sherman Act makes concerted refusal to deal, as in this case, an offense. *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U.S. 211, 214 (1951).

CONCLUSION

The Sherman Act does not sanction the suppression by a manufacturer of competition among its purchasers or sub-purchasers. *Ethyl Gasoline Corp. v. United States*, 309

U.S. 436, 452 (1940); nor does it permit limitation on sales to certain customers or classes of customers by vertical combination, *Dr. Miles v. Park*, 220 U.S. 373, 400 (1911); *United States v. Bausch & Lomb Co.*, 321 U.S. 707, 723 (1944); especially when part of a scheme to fix or maintain resale prices, *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44, 45 (1960). White can fare no better in a system of identical contracts with its distributors and dealers allocating territories and customers than could the distributors and dealers themselves "if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other." *Dr. Miles v. Park*, 220 U.S. 373, 408 (1911).

In *Associated Press v. United States*, 326 U.S. 1, 15 (1945), the Supreme Court said:

"While it is true in a very general sense that one can dispose of his property as he pleases, he cannot 'go beyond the exercise of this right, and by contracts or combinations express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.' *United States v. Bausch & Lomb Co.*, 321 U.S. 707, 722. The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is [fol. 222] bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete."

Within legal limits, White may contract with its distributors, dealers or other customers with respect to the maintenance of certain standards and policies. Also, within legal limits, White may simply announce its policies regarding its customers' resale practices and terminate its business dealings with those who do not comply. *United States v. Colgate*, 250 U.S. 300 (1918); *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44 (1960). But the contractual provisions at issue in this case do not relate to such matters as pertain only to White's distributors' and dealers' good will in the community; location and appearance of show rooms, maintenance of adequate repair and service

facilities, employment of courteous and skilled technical and sales personnel, compliance with local laws and regulations, maintenance of good credit ratings, or assumption of primary responsibility for sales coverage of specified areas and classes of customers. At issue here is a system of agreements involving White and all distributors, dealers and direct dealers, in its nation-wide distribution system, which limit and suppress competition by fixing certain resale prices of White trucks and parts and by dividing markets, customers and classes of customers, including agreements which allow only White to bid on sales of trucks to Federal, State and local governmental agencies.

In *Park v. Hartman*, 153 F. 24 (C.C.A. 6, 1907), appeal dismissed 212 U.S. 588, Circuit Judge (later Mr. Justice) Lurton aptly described the effects of a system of illegal resale restrictions imposed by a manufacturer, resembling those in the instant case, in the following manner:

"Thus all room for competition between retailers, who supply the public, is made impossible. If these contracts leave any room at any point of the line for the usual play of competition between the dealers in the product marketed by complainant [the manufacturer], it is not discoverable. Thus a combination between the manufacturer, the wholesalers and the retailers to maintain prices and stifle competition has been brought about." (Id. 42.)

[fol. 223] The foregoing passage was quoted with approval by the Supreme Court in *Dr. Miles v. Park*, 220 U.S. 373, at page 400.

The Supreme Court, in *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940), at pages 221, 222, condemned all price tampering conspiracies as violating the Sherman Act:

"Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The

Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress."

The subject provisions of defendant's selling agreements deprive purchasers or consumers, including all Federal, State and local governments, "of the advantages which they derive from free competition." *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 501 (1940), in the field of medium and heavy duty trucks in the United States and the District of Columbia, not only by eliminating competition among White's own distributors, dealers and direct dealers, but also by restraining and preventing their competing with, or bidding against, other truck manufacturers, and their respective distributors and dealers, outside their assigned sales areas.

On the basis of the facts found herein, as to which there is no genuine issue, the Court is of the opinion that the plain purpose and effect of the challenged provisions of White's selling agreements is to eliminate and suppress competition by fixing certain resale prices of White trucks and parts, by allocating customers and by dividing sales territories among competitors or potential competitors; that the contracts containing such provisions directly affect [fol. 224] interstate commerce and, as a matter of law under the authorities cited and discussed above, constitute contracts and combinations which, on their face, unreasonably restrain trade and commerce among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Sherman Act. Accordingly, the Government's motion for summary judgment will be sustained and the Court will issue an appropriate decree.

Entry of summary judgment in an antitrust case is both proper and desirable where the restraints complained of are clearly unreasonable, involving *per se* violations of the Sherman Act. *Associated Press v. United States*, 326 U.S. 1, 5, 6; *International Salt Co. v. United States*, 332 U.S. 392, 396 (1947). In sustaining the District Court's granting of summary judgment for the Government in *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958), the Supreme Court said, at pages 4 and 5:

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the Act is competition. And to this end it prohibits 'Every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States.' Although this prohibition is literally all-encompassing, the courts have construed it as precluding only those contracts or combinations which 'unreasonably' restrain competition. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1; *Chicago Board of Trade v. United States*, 246 U.S. 231.

"However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investiga-

[fol. 225] tion into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd 175 U.S. 211, group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n.*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392."

See also *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127 (1961).

There is nothing in the record to indicate that the defendant herein had any sinister motives in executing and maintaining the contractual provisions which the Court has determined to be unlawful on the basis of well established authority. Again referring to *United States v. Socony-Vacuum Oil Co.*, *supra*, at page 222 (page 40 of this memorandum), defendant's arguments as to the business necessity of agreements of this type must be addressed to the Congress rather than to the Courts.

The traditional function of the trial Court is to interpret and apply the law, rather than to declare the law. Thus, it may frequently occur that a judge is required to render a decision that does not necessarily reflect his personal attitude or philosophy upon the subject. Upon the basis of the foregoing careful analysis and findings of fact as to which there is no genuine issue and the conclusions of law herein contained, my function as a judge is properly performed.

The Government will submit a proposed decree.

Girard E. Kalbfleisch, United States District Judge.

ANNUAL SALES OF WHITE TRUCKS BY DEFENDANT

Classes of Customers	1955	1956	1957	(First 7 Mos.) 1958
	Amount	Amount	Amount	Amount
U. S. Government.	\$ 770,000	\$ 473,000	\$ 13,862,000	\$18,857,000
Government of D. C.	3,000	--	--	8,000
All Customers in D. C., except Gov't. of D. C. . . .	126,000	144,000	215,000	22,000
State & Local Gov't. & their Agencies.	814,000	839,000	1,235,000	1,020,000
National Accounts	3,725,000	4,989,000	5,237,000	3,204,000
Fleet Accounts.	37,084,000	43,804,000	42,392,000	28,860,000
Distributors.	52,249,000	53,862,000	52,260,000	35,117,000
Direct Dealers.	327,000	2,273,000	218,000	81,000
Indirect Dealers.	--	--	--	--
Fire Truck Buyers	8,000	--	10,000	13,000
All Other Buyers in U. S. . .	<u>7,822,000</u>	<u>9,726,000</u>	<u>12,042,000</u>	<u>5,519,000</u>
Total Sales by Defendant. . .	\$102,928,000	\$116,110,000	\$127,471,000	\$92,699,000

[fol. 227] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Title omitted]

FINAL JUDGMENT PROPOSED BY PLAINTIFF—
LODGED MAY 15, 1961—Filed July 3, 1961

This cause having come on to be considered upon a motion by the plaintiff for a summary judgment against the defendant The White Motor Company, the Court having determined, upon consideration of the record and the briefs, filed by the plaintiff and defendant, that there is no genuine issue between the parties as to any material fact, and the Court having filed its opinion hereon on the 21st day of April, 1961 granting the motion for summary judgment, it is hereby

Ordered, Adjudged and Decreed:

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto.

II

As used in this Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio;

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

(C) "Distributor" means any person engaged, in whole or in part, in the sale of trucks and parts at wholesale, including those persons heretofore designated by the defendant as distributors;

[fol. 228] (D) "Dealer" means any person engaged, in whole or in part, in the sale of trucks and parts at retail, including those persons heretofore designated by the defendant as "key dealer," "metropolitan dealer," "dealer," "direct key dealer," "direct metropolitan dealer," and "direct dealer."

III

The defendant has entered into contracts and combinations which unreasonably restrain trade and commerce in the distribution and sale of trucks and parts among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act.

IV

The provisions in the contracts between and among the defendant and its distributors and dealers,

- (A) purporting to impose limitations or restrictions on the territories within which, or persons to whom distributors and dealers may sell trucks, and
- (B) purporting to obligate distributors and dealers to sell trucks and parts at prices or upon terms and conditions established by the defendant.

are hereby adjudged unlawful and declared illegal and void.

V

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

VI

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any

[fol. 229] rights under, any combination, contract, agreement, understanding, plan or program with any distributor, dealer or any other person:

(A) To limit, allocate or restrict the territories in which, or the persons to whom, any distributor, dealer or other person may sell trucks;

(B) To fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of trucks or parts to any third person.

VII

(A) Defendant is ordered and directed within thirty (30) days after the date of the entry of this Final Judgment to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Defendant is ordered and directed within thirty (30) days after the date of the entry of this Final Judgment to mail a copy of this Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45) days after the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section VII.

VIII

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence,

[fol. 230] memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant, and without restraint or interference from the defendant, to interview, regarding any such matters, officers or employees of the defendant, who may have counsel present.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

X

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

....., United States District Judge.

Date:

[fol. 232] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Title omitted]

STATEMENT OF DEFENDANT'S DISAPPROVAL OF PLAINTIFF'S
PROPOSED DRAFT OF JUDGMENT, COPIES OF WHICH WERE
DELIVERED TO THE CLERK OF COURT AND SERVED ON THE
DEFENDANT ON MAY 15, 1961, AND STATEMENT OF DEFEN-
DANT'S OBJECTIONS THERETO AND OF THE REASONS FOR
SAID OBJECTIONS, AND DRAFT OF JUDGMENT WHICH DE-
FENDANT PROPOSES AS A SUBSTITUTE FOR THE PLAINTIFF'S
DRAFT AND SUBMITS HERewith—June 3, 1961

The defendant disapproves the plaintiff's proposed draft
of judgment, copies of which were delivered to the Clerk
of this Court and served upon this defendant on May 15,
1961.

The following is a statement of the defendant's objec-
tions to the plaintiff's said draft of judgment and of the
reasons therefor:

1. The definitions of "distributor" and "dealer" in para-
graphs (C) and (D) of Section II of plaintiff's pro-
posed draft of judgment should be confined to dis-
tributors and dealers in the United States and are
otherwise not factually accurate. Definitions believed
by us to be accurate are set forth in the defendant's
proposed draft of judgment which is submitted here-
with.
2. The finding contained in Section III of the plaintiff's
proposed draft of judgment is too broad and indefinite
and inaccurate, since the Court has found (and could
find on the present Motion for Summary Judgment)
only that the defendant has entered into contracts
with distributors and dealers containing, among
other provisions, the provisions thereafter in the

[fol. 233] judgment adjudged to be unlawful which unreasonably restrain trade and commerce among the states of the United States and the District of Columbia in violation of Sections 1 and 3 of the Sherman Antitrust Act. See the defendant's proposed draft of judgment submitted herewith.

3. The provisions in the contracts between and among the defendant and its distributors and dealers which the Court has found to be illegal, should be much more definitely and accurately stated than they are in Section IV of the plaintiff's draft of Final Judgment. The defendant is entitled to be advised specifically and accurately in the judgment as to the provisions of its contracts which the Court has adjudged to be illegal. Furthermore, there is no basis whatsoever, either in the plaintiff's Motion for Summary Judgment or in the Court's opinion, for a finding that any provisions of the defendant's contracts are unlawful, other than the provisions limiting or restricting the territories within which and the persons to whom distributors and dealers may sell trucks, and the provisions fixing prices; and, consequently, the phrase "or upon terms and conditions" contained in paragraph (B) of Section IV of the plaintiff's proposed draft of judgment should be omitted. We believe that the defendant's draft of judgment submitted herewith accurately states the contractual provisions which the Court has held to be illegal. If, contrary to our understanding, there is any other contractual provision which the Court holds to be illegal, such provision should be specifically and accurately stated in the judgment.
4. The provisions of Section VI of the plaintiff's proposed draft of Final Judgment are not confined to relief on this issues raised on the Motion for Summary Judgment in this case and are too broad. More specifically, the words "combination" and "plan or program" in the line at the top of page 3 of plaintiff's [fol. 234] proposed draft of judgment have no basis for use in this case, where the only question at issue

or which could be at issue under the plaintiff's Motion for Summary Judgment, is whether certain provisions of the defendant's contracts with its distributors or dealers are *per se* in unreasonable restraint of commerce and illegal. Furthermore, what the words "combination" and "plan or program" would mean in the context of this case, there is no means of knowing. In addition, there should be added a clause making it clear that the defendant has the right to choose and select distributors and dealers and to designate geographical areas in which such distributors and dealers shall respectively be primarily responsible for selling products made or sold by the defendant, and the right to discontinue dealing with distributors or dealers who do not adequately represent the defendant and promote the sale of its products, in their respective areas of primary responsibility. This is a clause which has commonly been used by the Government in consent decrees. Furthermore, while the Miller-Tydings Act and the McGuire Act have not now and never have had any application to the defendant's marketing practices, yet, since the Final Judgment has no limitation as to duration, a clause should be added to preserve any lawful rights which the defendant may have and choose to exercise in the future under the provisions of the Miller-Tydings Act or the McGuire Act or any similar law of the United States. We submit that Section VI of the defendant's proposed draft of Final Judgment, which is submitted herewith, adequately enjoins the defendant from doing anything and everything which the Court has found to be illegal, or could find to be illegal on the plaintiff's Motion for Summary Judgment.

5. The defendant has filed a Motion to Stay Judgment [fol. 235] Pending Appeal and while this Court, as we read the authorities, may, at its election, insert in the Final Judgment a paragraph providing for such stay or make a separate order providing therefore, we suggest that, unless the Court prefers to make a separate order with reference thereto, a paragraph providing

for such stay be added to the Final Judgment. The authorities cited by us in support of the Motion to Stay Judgment Pending Appeal fully support such motion and the insertion of such paragraph in the Final Judgment. We have consequently added to the defendant's proposed draft of Final Judgment, which is submitted herewith, in Section XI thereof, a paragraph providing for such stay of judgment pending appeal, in a form heretofore used in antitrust cases under circumstances similar to those in the case at issue.

The defendant submits herewith a draft of the judgment which it proposes as a substitute for the draft submitted by the plaintiff.

Respectfully submitted,

John H. Watson, Jr., John T. Scott, James M. Porter,
1649 Union Commerce Building, Cleveland, Ohio,
Attorneys for Defendant, The White Motor Com-
pany.

M. B. & H. H. Johnson, 1649 Union Commerce Building,
Cleveland, Ohio, Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 1961, I served a copy of the foregoing and a copy of the defendant's proposed draft of Final Judgment submitted herewith and attached hereto, upon Robert B. Hummel and Frank B. Moore, Jr., counsel for plaintiff, by depositing same in the United States mails, postpaid, addressed to them at the Great Lakes Field Office of the Department of Justice, Antitrust Division, 526 Standard Building, Cleveland 13, Ohio.

James M. Porter, Attorney for Defendant.

[fol. 236]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[Title omitted]

FINAL JUDGMENT PROPOSED BY DEFENDANT—
Filed June 3, 1961

This cause having come on to be considered upon a motion by the plaintiff for a summary judgment against the defendant, The White Motor Company, and the Court having determined, upon consideration of the record and the briefs filed by the plaintiff and the defendant, that there is no genuine issue between the parties as to any material fact, and the Court having filed its opinion hereon on the 21st day of April, 1961, granting the motion for summary judgment, it is hereby

Ordered, Adjudged and Decreed:

I.

The Court has jurisdiction of the subject matter hereof and of the parties hereto.

II.

As used in this Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio;

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

(C) "Distributor" means any person engaged in the purchase from the defendant of trucks and parts and in the sale thereof, in whole or in part at wholesale, in the United States of America. As used in the defendant's contracts with "distributors", "distributor" also includes persons en-

[fol. 237] gaged in the purchase from the defendant of trucks and parts and in the sale thereof at retail in the United States of America.

(D) "Dealer" means any person engaged in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and in the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as "key dealer", "metropolitan dealer", "dealer", "direct key dealer", "direct metropolitan dealer", and "direct dealer".

III.

The defendant has entered into contracts containing, among other provisions, the provisions hereinafter adjudged to be unlawful, illegal and void, which unreasonably restrain trade and commerce in the distribution and sale of trucks and parts among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act.

IV.

The following provisions in contracts between and among the defendant and its distributors and dealers are hereby adjudged unlawful and declared illegal and void, to wit:

- (A) Provisions that the distributor or dealer, as the case may be, agrees not to sell trucks purchased by the distributor or dealer under the contract, except to individuals, firms or corporations having a place of business and/or purchasing headquarters in a specified territory.
- (B) Provisions that the distributor or dealer, as the case may be, agrees not to sell trucks purchased by the distributor or dealer under the contract, to any person, firm or corporation for resale by such person, firm or corporation, except the defendant's branches and the defendant's approved distributors and dealers, unless the right to do so is specifically

granted by the defendant in writing, and provisions that the distributor or dealer agrees not to sell such [fol. 238] trucks to any Federal or State Government or any department or political subdivision thereof, unless the right to do so is specifically granted by the defendant in writing.

- (C) Provisions providing that distributors agree to sell to their dealers new White truck standard chassis, including standard equipment and accessories mounted thereon, and new White parts and accessories, at prices established by the defendant, and provisions that distributors or dealers, as the case may be, agree to extend to firms and corporations, and subsidiaries of the latter, designated by the defendant as "National Accounts" or "Fleet Accounts", and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed the aforementioned accounts by the defendant.

V.

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under, any provision of any contract, agreement or understanding with any distributor or dealer, which provision

- (A) limits or restricts, or purports to limit or restrict, the territories in which any distributor or dealer may sell trucks, provided, however, that, subject to the foregoing provisions of Section VI (A), the

defendant may exercise the right to choose and [fol. 239] select distributors and dealers and to designate geographical areas in which such distributors and dealers shall respectively be primarily responsible for selling products made or sold by the defendant, and to terminate the franchises of, or cease to sell to, distributors or dealers who do not adequately represent the defendant and promote the sale of said products in areas so designated as their primary responsibility;

- (B) limits or restricts, or purports to limit or restrict, the persons to whom any distributor or dealer may sell trucks;
- (C) fixes, establishes or maintains, or purports to fix, establish or maintain, the prices or discounts at which distributors or dealers may sell trucks, or parts thereof, to any third person, provided, however, that this provision shall not be construed as depriving the defendant of any lawful rights which the defendant may have under the provisions of the so-called Miller-Tydings Act or the so-called McGuire Act, or any similar law hereafter enacted by the Congress of the United States.

VII.

(A) Defendant is ordered and directed within thirty (30) days after the date of the entry of this Final Judgment to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Defendant is ordered and directed within thirty (30) days after the date of the entry of this Final Judgment to mail a copy of this Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45)

days after the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section VII.

[fol. 240]

VIII.

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant, and without restraint or interference from the defendant, to interview, regarding any such matters, officers or employees of the defendant, who may have counsel present.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

X.

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as [fol. 241] may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XI.

The injunctions provided for hereinabove and all executory action under this Final Judgment shall not become effective or operative until sixty (60) days after the date of the entry of this Final Judgment, and, in the event an appeal is prosecuted by the defendant, all injunctive and executory actions provided for herein shall be stayed and suspended pending the final disposition of such appeal, conditioned upon the defendant's entering into an appeal and supersedeas bond in the amount of \$250.00.

....., United States District Judge.

Date:

[fol. 251] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

Civil Action No. 34593

UNITED STATES OF AMERICA, Plaintiff,

v.

THE WHITE MOTOR COMPANY, Defendant.

FINAL JUDGMENT—September 5, 1961

This cause having come on to be considered upon a motion by the plaintiff for a summary judgment against the

defendant, The White Motor Company, the Court having determined, upon consideration of the record and the briefs filed by the plaintiff and defendant, that there is no genuine issue between the parties as to any material fact, and the Court having filed its memorandum herein on the 21st day of April, 1961,

It Is Hereby Ordered, Adjudged and Decreed That:

I.

The Court has jurisdiction of the subject matter hereof and of the parties hereto and plaintiff's motion for summary judgment is sustained.

II.

As used in this Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio;

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

[fol. 252] (C) "Distributor" means any person engaged, in whole or in part, in the purchase from the defendant of trucks and parts and in the sale thereof at wholesale or at retail in the United States of America, including those persons heretofore designated by the defendant as "distributor" or "franchised distributor."

(D) "Dealer" means any person engaged, in whole or in part, in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as "key dealer," "metropolitan dealer," "dealer," "direct key dealer," "direct metropolitan dealer," and "direct dealer."

III.

The defendant has entered into contracts and combinations with its dealers and distributors which unreasonably

restrain trade and commerce in the distribution and sale of trucks and parts among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, 15 U.S.C.A., 1, 3.

IV.

The provisions in the contracts between and among the defendant and its distributors and dealers,

- (A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and
- (B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant,

are hereby adjudged unlawful, illegal, null and void.

[fol. 253]

V.

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer, or any other person:

(A) To limit, allocate or restrict the territories in which, or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks;

(B) To fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of trucks or parts to any third person.

VII.

(A) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to mail a copy of this Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45) days after the effective date of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section VII.

[fol. 24]

VIII.

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant, and without restraint or interference from the defendant, to interview, regarding any such matters, officers or employees of the defendant, who may have counsel present.

No information obtained by the means provided in this Section VIII shall be divulged by any representative of

the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

[fol. 255]

X.

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XI.

The injunctions provided for hereinabove and all executory action under this Final Judgment shall not become effective or operative until sixty (60) days after the date of the entry of this Final Judgment; and, in the event an appeal is prosecuted by the defendant, all injunctive and executory actions provided for herein shall be stayed and suspended pending the final disposition of such appeal, conditioned upon the defendant's entering into an appeal and supersedeas bond in the amount of Two Hundred and Fifty Dollars (\$250.00).

Girard E. Kalbfleisch, United States District Judge.

Date: Sept. 5, 1961.

[fol. 256]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
Civil Action No. 34593

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE WHITE MOTOR COMPANY, Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES—Filed October 26, 1961

I. Notice is hereby given that The White Motor Company, the defendant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment dated and entered in this action on September 5, 1961.

This appeal is taken pursuant to Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. §29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Amended Complaint.
2. Answer to Amended Complaint.
3. Interrogatories Propounded by the Plaintiff to the Defendant, dated and filed August 19, 1958.
4. Answers of the Defendant to Plaintiff's Interrogatories with attached Exhibits A-N, inclusive.
5. Stipulation and order for the withdrawal by the Plaintiff of Interrogatory 14a.

6. Stipulation and order with respect to Interrogatory 8.
7. Answer of the Defendant to Interrogatory 8 with attached Exhibit J-1.
8. Deposition of Alfred Dixon Edgerton and Plaintiff's Exhibits Edgerton, 1-36, inclusive, filed October 16, 1959.
- [fol. 257] 9. Plaintiff's Motion for Summary Judgment, filed April 18, 1960.
10. Brief of Defendant in opposition to Plaintiff's Motion for Summary Judgment, and corrected index thereto.
11. Memorandum Opinion, filed April 21, 1961, sustaining motion of Plaintiff for summary judgment (but containing substituted page 42).
12. Final Judgment proposed by Plaintiff.
13. Statement of Defendant's disapproval of Plaintiff's proposed Final Judgment, and Defendant's proposed Final Judgment.
14. Motion of Defendant to Stay Judgment Pending Appeal.
15. Final Judgment entered September 5, 1961.
16. Notice of Appeal.
17. Appeal and Supersedeas Bond.

III. The following questions are presented by this appeal:

1. Whether provisions in contracts between the Defendant (a manufacturer of motor trucks) and its distributors and dealers, which provide that the distributor or dealer (as the case might be) is granted the exclusive right (with certain specified exceptions) to sell during the life of the contract, in a certain specified territory, "White" and "Autocar" trucks purchased from the Defendant under the contract, and that the distributor or dealer (as the case

might be) agrees not to sell such trucks except to individuals, firms or corporations having a place of business and/or purchasing headquarters in said territory, can properly be held, on a motion for summary judgment, to be illegal *per se* as being, as a matter of law, in unreasonable restraint of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U. S. C., §§ 1 and 3), even though facts which might be shown in evidence at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

2. Whether provisions in contracts between the Defendant and its distributors and dealers, which provide that the distributor or dealer (as the case might be) agrees not to sell "White" and "Autocar" trucks purchased from the Defendant under the contract, to any person, firm or corporation (except to the Defendant or the Defendant's [fol. 258] distributors or dealers) for resale by such person, firm or corporation, nor to any Federal or State Government or any department or political subdivision thereof, unless the right to do so is specifically granted by the Defendant, can properly be held, on a motion for summary judgment, to be illegal *per se* as being, as a matter of law, in unreasonable restraint of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U. S. C., §§ 1 and 3), even though facts which might be shown in evidence at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

3. Whether, even if the aforesaid provisions of contracts between the Defendant and its distributors and dealers which the United States District Court for the Northern District of Ohio, Eastern Division, has found, in this case, to be illegal should be found by the Supreme Court to be illegal, the judgment entered by the District Court is improper in that it does not sufficiently identify the provisions of said contracts which are adjudged to be illegal and in that the injunctive provisions contained in the judgment are so broad as to enjoin, or be subject to the construction that they enjoin, actions which are neither illegal nor ac-

tions which it is necessary or appropriate to enjoin in order to prevent resumption by the Defendant of the actions found by the District Court to be illegal.

John H. Watson, Jr., James M. Porter, 1649 Union Commerce Building, Cleveland, Ohio, Attorneys for Appellant, The White Motor Company.

M. B. & H. H. Johnson, 1649 Union Commerce Building, Cleveland, Ohio, Of Counsel.

Proof of Service (omitted in printing).

[f6l. 258a]

SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—April 23, 1962

Appeal from the United States District Court for the Northern District of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

April 23, 1962

Mr. Justice Frankfurter and Mr. Justice White took no part in the consideration or decision of this case.

[fol. 262]

**Exhibit "A" Attached to Defendant's Answers
to Interrogatories**

[fol. 267]

1. CARR WHITE TRUCK COMPANY, INC.

Distributor Name

809 Virginia Street

Street Address

Mobile, Alabama

City and State

2 (a)i Date of Contract—January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Alabama:

Counties of—Baldwin

Clark

Escambia

Mobile

Washington

On February 1, 1958 Selling Territory changed to:

State of Alabama:

Counties of—Baldwin

Choctaw

Clark

Escambia

Monroe

Mobile

Washington

State of Florida:

Counties of—Escambia

Santa Rosa

[fol. 269]

Joseph W. Murphy and Elizabeth Hobbie Wright
d.b.a.

1. M. & W. WHITE TRUCK SALES AND SERVICE

Distributor Name

1810 Bell Street P. O. Box 1264

Street Address

Montgomery, Alabama

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Alabama:

Counties of—Montgomery

Autauga

Macon

Pike

Crenshaw

Bullock

Lowndes

Elmore

[fol. 272]

1. NORTHLAND SALES INCORPORATED

Distributor Name

.....
Street Address

Anchorage, Alaska

City and State

2 (a)i Date of Contract January 6, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Territory of Alaska, Alaska

[fol. 275]

1.

FAIRBANKS AUTOMOTIVE

Dealer Name

707—14th. Ave.

Street Address

Fairbanks, Alaska

City and State

Contracted By

NORTHLAND SALES, INC.

Distributor Name

Anchorage, Alaska

City and State

2 (a)i Date of Contract **May 1, 1958**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Fourth Judicial Division, Territory of Alaska

[fol. 280]

J. P. Christensen and E. C. Christensen
d.b.a.

1. CHRISTENSEN BROTHERS' GARAGE

Dealer Name

901 Twelfth

Street Address

Juneau, Alaska

City and State

Contracted By

NORTHLAND SALES, INC.

Distributor Name

Anchorage, Alaska

City and State

2 (a)i Date of Contract April 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Alaska:

City of Juneau

[fol. 283]

1.

WILLISTON & IRELAND

Dealer Name

P. O. Box 968

Street Address

Kingman, Arizona

City and State

Contracted By

TRUCK EQUIPMENT COMPANY

Distributor Name

Phoenix, Arizona

City and State

2 (a)i Date of Contract January 1, 1955.

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Arizona:

County of—Mohave

[fol. 285]

1.

TRUCK EQUIPMENT COMPANY

Distributor Name

2401 West McDowell Road

Street Address

Phoenix, Arizona

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Entire State of Arizona, excepting Yuma County

[fol. 292]

1. NEWELL-WHITE MOTORS, INC.

Key Dealer Name

P. O. Box 270 Smackover Highway

Street Address

El Dorado, Arkansas

City and State

Contracted By

LITTLE ROCK WHITE
SALES AND SERVICE, INC.

Distributor Name

Little Rock, Arkansas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Arkansas:

Counties of—Ashley

Chicot

Columbia

Ouachita

Union

[fol. 296]

Charley J. Buell

d.b.a.

1.

BUELL-WHITE MOTORS

Key Dealer Name

1702 Midland Boulevard

Street Address

Fort Smith, Arkansas

City and State

Contracted By

**LITTLE ROCK WHITE
SALES & SERVICE, INC.**

Distributor Name

Little Rock, Arkansas

City and State

2 (a)i **Date of Contract** **January 1, 1955**

2 (a)ii **Termination Date of Contract**

2 (b) **Selling Territory Assigned:**

State of Arkansas:

Counties of—Crawford

Franklin

Johnson

Logan

Scott

Sebastian

[fol. 298]

1.

LITTLE ROCK WHITE SALES & SERVICE, INC.

Distributor Name

3401 East Roosevelt

Street Address

Little Rock, Arkansas

City and State

2 (a) Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Arkansas:

Counties of—

Saline	Cleburne	Jackson
Scott	Cleveland	Jefferson
Searcy	Columbia	Johnson
Sebastian	Conway	Lawrence
Sharp	Crawford	Lincoln
Stone	Dallas	Logan
Union	Desha	Lonoke
Van Buren	Drew	Marion
White	Faulkner	Montgomery
Yell	Franklin	Nevada
Arkansas	Fulton	Ouachita
Ashley	Garland	Perry
Baxter	Grant	Pike
Bradley	Hempstead	Polk
Calhoun	Hot Springs	Pope
Chicot	Howard	Prarie
Clark	Independence	Pulaski
Clay	Izard	Randolph

[fol. 307]

1. **WHITE TRUCK SALES & SERVICE, INC.**

Distributor Name

Highway 71—South

Street Address

Springdale, Arkansas

City and State

2 (a)i Date of Contract May 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Arkansas:

Counties of—Benton

Boone

Carroll

Madison

Newton

Washington

[fol. 310]

1.

SOUTHERN GARAGE

Distributor Name

705 S. Union Ave

Street Address

Bakersfield, California

City and State

2 (a)i Date of Contract January 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Kern

Inyo

[fol. 311]

1.

**BAKERSFIELD TRUCK &
TRAILER REPAIR**

Distributor Name

126 Union Avenue

Street Address

Bakersfield, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 27, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Kern

Inyo

[fol. 314]

1.

GEORGE COOPER COMPANY

Distributor Name

201 South Victory Blvd.

Street Address

Burbank, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Antelope Valley; San Fernando Valley within the County of Los Angeles, Burbank, Glendale, and that section of Los Angeles north from Fletcher Drive and west to Los Angeles River, excluding Monolith Cement Co. and Mullin Lumber Co. of No. Hollywood.

[fol. 322]

1.

DE BON MOTOR CO. OF EUREKA

(a corporation)

Distributor Name

2008 Broadway

Street Address

Eureka, California

City and State

2 (a)i Date of Contract January 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Humboldt

Del Norte

Lake

Mendocino

Trinity—except East twenty (20)

Miles of Trinity County

[fol. 325]

1. CONNELL MOTOR TRUCK CO. OF FRESNO

Distributor Name

2838 Church Street P. O. Box 3400

Street Address

Fresno, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract.....

Contract Replaced by New Contract on
March 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Merced

Mariposa

Madera

Fresno

Tulare

Kings

Mono

[fol. 326]

1.

FRESNO TRAILER COMPANY

Distributor Name

P. O. Box 924

Street Address

Fresno, California

City and State

2 (a)i Date of Contract September 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Fresno

Kings

Madera

Merced

Tulare—except the sale of fire
truck chassis to the State
of California and all
political subdivisions
thereof.

[fol. 330]

1.

Joseph C. Gill

d.b.a.

JOE GILL MOTOR CO.

Distributor Name

700 West 17th Street

Street Address

Long Beach, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Entire county of Orange and that southern portion of Los Angeles County extending from the south side of Rosecrans Blvd. to the coast on the west and south and to the Orange County line on the east.

[fol. 333]

1. COOK BROTHERS EQUIPMENT COMPANY

Distributor Name

3334 San Fernando Road

Street Address

Los Angeles, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

Distributor will extend it's best efforts to sell Reo products in the State of California and Nevada to members of the construction industry.

[fol. 339].

1.

REGALIA MACHINE WORKS

Direct Key Dealer Name

1024 Vallejo Road

Street Address

Napa, California

City and State

2 (a)i Date of Contract April 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

City of Napa—except the sale of fire truck chassis to the State of California and all political subdivisions thereof.

[fol. 342]

1.

P. E. VAN PELT, INC.

Distributor Name

Yosemite & "G" Streets

Street Address

Oakdale, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

City of Oakdale in the County of Stanislaus—
with the additional exclusive right to sell fire
truck chassis in the following counties:

Humboldt	Madera	Modoc
Lake	Mono	Nevada
Marin	Merced	Placer
Mendocino	Stanislaus	Plumas
Monterey	Mariposa	Sacramento
Napa	Tulare	San Joaquin
San Benito	Alameda	Shasta
San Francisco	Contra Costa	Siskiyou
San Mateo	Butte	Sierra
Santa Clara	Alpine	Sutter
Santa Cruz	Amador	Tehama
Sonoma	Calaveras	Tuolumne
Solano	Colusa	Yolo
Trinity	El Dorado	Yuba
Fresno	Glenn	Del Norte
Kings	Lassen	

[fol. 345]

1. OAKLAND WHITE TRUCK SALES

Distributor Name

501—23rd Avenue

Street Address

Oakland 6, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

The following counties located in State of California—Alameda, Contra Costa, Napa, and Solano, with the exception of Fire Truck Chassis to the State of California and all political sub-divisions thereof. The following accounts are EXCLUDED from your contract: Safeway Stores, Los Angeles-Seattle Motor Express, Pacific Intermountain Express, General Petroleum Corporation, and Key System, all of Oakland, California, and Union Oil Company and Delta Lines, Inc., both of Emeryville, California.

On April 1, 1956 Selling Territory changed to:

State of California:

The following counties located in the State of California—Alameda, Contra Costa, Napa, and Solano, excepting the City of Napa in Napa County, with the exception of Fire Truck Chassis to the State of California and all political sub-divisions thereof. The following accounts are EXCLUDED from your contract: Safeway Stores, Los Angeles-Seattle Motor Express, Pacific Intermountain Express, General Petroleum Corporation, and Key System, all of Oakland, California, and Union Oil Company and Delta Lines, Inc., Both of Emeryville, California.

[fol. 346]

1.

**COOK BROTHERS TRUCK &
EQUIPMENT COMPANY**

Distributor Name

7101 San Leandro Street

Street Address

Oakland, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

City of Oakland and vicinity.

[fol. 350]

1.

COCHRAN & NICHOLS

Distributor Name

312 N. Euclid Ave

Street Address

Ontario, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

San Bernardino County, Riverside County,
Clark County, Nevada;Los Angeles County west to Azusa Ave., south
to Garvey Blvd., West to Glendora Ave., south
to Puente Hills.

[fol. 356]

William A. Bystle

1.

d.b.a.

BYSTLE'S TRUCK AND PARTS

Distributor Name

1238 West Street

Street Address

Redding, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Shasta and Tehama Counties and the East
Twenty (20) Miles of Trinity County, except
the sale of fire truck chassis to the State of
California and all political subdivisions thereof.

[fol. 358]

1.

BRIGGS & ELLIOTT

Key Dealer Name

3020 La Cadena at First

Street Address

Riverside, California

City and State

Contracted By

COCHRAN & NICHOLS

Distributor Name

.....
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

City of Riverside

[fol. 363]

1. **SUTTON-WHITE TRUCK COMPANY****(A Corporation)**

Distributor Name

P. O. Box 1436

Street Address

Sacramento, California

City and State

2 (a)i Date of Contract January 2, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—	Sacramento	Colusa
	El Dorado	Glenn
	Placer	Butte
	Nevada	Sutter
	Yolo	Yuba

except the sale of fire truck
chassis to the State of Cali-
fornia and all political sub-
divisions thereof.

[fol. 365]

1.

HERMAN C. LYNN

Distributor Name

288 South "E" Street

Street Address

San Bernadino, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 3, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—San Bernadino
Riverside

[fol. 368]

1. **SOUTHWEST EQUIPMENT CO.**

Distributor Name

3552 West Camino Del Rio

P. O. Box 1475 Old San Diego Station

Street Address

San Diego 10; California

City and State

2 (a)i Date of Contract March 15, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—San Diego

Imperial

[fol. 374]

1. **SAN JOSE AUTOCAR WHITE COMPANY**

(A California Corporation)

Distributor Name

1675 Bayshore

Street Address

San Jose, California.

City and State

2 (a)i Date of Contract January 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Santa Clara

Santa Cruz

San Benito

Monterey

—except all sales of fire truck chassis to the State of California and all political subdivisions thereof.

Excluding Safeway Stores account located in the City of Palo Alto.

[fol. 379]

1. **THE MILLER MOTOR COMPANY**

Distributor Name

964 Petaluma Hill Road

Street Address

Santa Rosa, California

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Territory to consist of all of Sonoma County, north of a line starting at the western Boundary, or Pacific Coast, passing through the City of Bodega and extending due east to the east boundary line of Sonoma County, except the sale of fire truck chassis to the State of California and all political subdivisions thereof.

[fol. 383]

1. **CONNELL MOTOR TRUCK COMPANY, INC.**

Distributor Name

2211 North Highway 99

Street Address

Stockton, California

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—San Joaquin

Amador

Alpine

Calaveras

Stanislaus

Tuolumne

[fol. 385]

The Cecchini Company1. **d.b.a.****GARVEY WHITE TRUCK SALES AND SERVICE**

Distributor Name

Highway 99 and Cherokee Lane, P. O. Box 68

Street Address

Stockton, California

City and State

- 2 (a)i Date of Contract June 1, 1958
- 2 (a)ii Termination Date of Contract
- 2 (b) Selling Territory Assigned:

State of California:

Counties of—Amador

Calaveras

Mariposa

Mono

San Joaquin

Stanislaus (except City of Oakdale)

Tuolumne

[fol. 387]

1. THE DE BON MOTOR COMPANY

Distributor Name

Route #1, Box 540 North 101 Highway

Street Address

Ukiah, California

City and State

2 (a)i Date of Contract January 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Humboldt, Del Norte, Lake, Mendocino and
Trinity Counties (Except the east twenty miles
of Trinity county). With the exception of the
sales of fire truck chassis to the State of Cali-
fornia and all political subdivisions thereof.

[fol. 388]

1. TRI-COUNTY EQUIPMENT CO.

Distributor Name

.....
Street Address

Ventura, California

City and State

2 (a)i Date of Contract August 15, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Ventura

Santa Barbara

San Luis Obispo

[fol. 393]

1.

OCHOA BROS.

Key Dealer Name

1250 Fortna Avenue

Street Address

Woodland, California

City and State

Contracted By

SUTTON-WHITE TRUCK COMPANY

Distributor Name

Sacramento, California

City and State

2 (a)i Date of Contract January 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

County of Colusa; entire County of Yolo except vicinity of Broderick, West Sacramento, and the Clarksburg area that borders Solano County; and except the sale of fire truck chassis to the State of California and all political subdivisions thereof.

[fol. 395]

1.

CORTEZ DIESEL SALES

Direct Key Dealer Name

.....
Street Address**Cortez, Colorado**

City and State

2 (a)i Date of Contract September 25, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Colorado:

County of—Montezuma

[fol. 408]

1.

BREWER BROTHERS, INC.

Distributor Name

Railroad Avenue

Street Address

Canaan, Connecticut

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

Canaan and vicinity

[fol. 409]

1.

PARAMOUNT GARAGE, INC.

Distributor Name

20 Ash Street

Street Address

East Hartford, Connecticut

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

County of Hartford

{fol. 414]

1. THE CONNECTICUT WHITE TRUCK
CORPORATION

Distributor Name

1320 Kings Highway Cutoff

Street Address

Fairfield, Connecticut

City and State

2 (a)i Date of Contract February 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

County of Fairfield

[fol. 416]

1. BAUMERT-MORAN SALES CO. INC.

Distributor Name

920 Maple Ave.

Street Address

Hartford, Connecticut

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

Counties of—Tolland

Windham

New London

Hartford

In Middlesex County—

Townships of Cromwell

Portland

East Hampton

Middletown City

Middlefield

East Haddam

In New Haven County—

Township of Meriden City

In Litchfield County—

Townships of Colebrook

Winchester

Winsted City

Burkhamsted

New Hartford

Torrington City

[fol. 419]

1. **SAMUEL FISHKIN & SON, INC.**

Key Dealer Name

569 (P.O. Box 284) Colman

Street Address

New London, Connecticut

City and State

Contracted By

BAUMERT-MORAN SALES CO. INC.

Distributor Name

Hartford, Connecticut

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

New London County with the exception of
Schuster's Express in Colchester.

[fol. 424]

1. **REO SALES & SERVICE OF STAMFORD**

Distributor Name

75 Myrtle Avenue

Street Address

Stamford, Connecticut

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

City of Stamford and vicinity.

[fol. 425]

1.

CORSI BROTHERS, INC.

Key Dealer Name

1060 South Main St.

Street Address

Torrington, Conn.

City and State

Contracted By

BAUMERT-MORAN SALES CO, INC.

Distributor Name

Hartford, Conn.

City and State

2 (a)i Date of Contract June 28, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

The following townships in the county of
Litchfield—Torrington

Barkhamsted

New Hartford

Winsted

Winchester Center

Colebrook

[fol. 428]

1. **WATERBURY TRUCK SERVICE, INC.**

Distributor Name

414 Bank

Street Address

Waterbury, Connecticut

City and State

2 (a)i Date, of Contract **October 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

Litchfield County—

Townships of Kent

Warren .

Litchfield

Harwinton

New Milford

Washington

Morris

Bethlehem

Thomaston

Plymouth

Watertown

Woodbury

Roxbury

Bridgewater

New Haven County—

Townships of Wolcott

Waterbury

Middlebury

Southbury

Oxford

Naugatuck

Beacon Falls

Prospect

[fol. 433]

1. **THE CONNECTICUT WHITE TRUCK
CORPORATION**

Distributor Name

575 Orange Avenue
Street Address

West Haven, Connecticut
City and State

2 (a)i Date of Contract' February 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

County of Fairfield

County of New Haven—
except the townships of—

Meriden City
Waterbury
Southbury
Naugatuck
Prospect

Wolcott
Middlebury
Oxford
Beacon Falls

County of Middlesex—

Townships of—

Durham
Killingsworth
Westbrook
Essex
Chester

Haddam
Clinton
Old Saybrook
Saybrook

[fol. 434]

W. M. Berlute

1.

d.b.a.

REO SALES & SERVICE

Distributor Name

236 Forest Road

Street Address

West Haven, Connecticut

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Connecticut:

All of Middlesex County and New Haven
County except the townships of Wolcott, Water-
bury, Prospect, Naugatuck and Middlebury.

[fol. 437]

1.

**WILMINGTON & CHESTER MOTOR
SALES, INC.**

Distributor Name

922 South Heald Street

Street Address

Wilmington, Delaware

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Delaware:

Counties of—New Castle

Kent

State of Maryland:

Counties of—Cecil

Kent

Queen Ann and

Northern half of Caroline

State of Pennsylvania:

The Townships of Birmingham, Bethel, Chester Thornbury, Upper Providence, Lower Chichester, Aston, Edgemont, Upper Chichester, Middletown, Concord, Eddystone, Ridley and Springfield, all in Delaware County.

The Townships of New Garden, Franklin, London, New London, East Nottingham, East Marlboro, Penn, West Nottingham, Kennett, Elk, Grove, Nottingham, Pennsbury, Birmingham, Lower Oxford, West Marlboro, Upper Oxford and Newlin, all in Chester County.

[fol. 442]

1.

CLAUDE NOLAN, INC.

Distributor Name

Main and Orange Streets

Street Address

Jacksonville, Florida

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Florida:

Entire State with the exception of the following
counties:

Bay	Lake	Polk
Brevard	Manatee	Santa Rosa
Escambia	Okaloosa	Sarasota
Hillsborough	Orange	Seminole
Holmes	Osceola	Walton
Jackson	Pinellas	Washington

State of Georgia:

Counties of—

Appling	Coffee	Lanier
Atkinson	Colquitt	Lowndes
Bacon	Cook	McIntosh
Berrien	Decatur	Pierce
Brantley	Echols	Seminole
Brooks	Irwin	Thomas
Camden	Jeff Davis	Ware
Charlton	Glynn	Wayne
Clinch	Grady	

On July 1, 1958 Selling Territory changed to:

• State of Florida:

Counties of—

Alachua	Gadsden	Marion
Baker	Gilchrist	Nassau
Bradford	Gulf	Pasco
Calhoun	Hamilton	Putnam
Citrus	Hernando	St. Johns
Clay	Jefferson	Sumter
Columbia	Lafayette	Suwannee
Dixie	Leon	Taylor
Duval	Levy	Union
Flagler	Liberty	Volusia
Franklin	Madison	Wakulla

[fol. 443]

State of Georgia:

Counties of—

Appling	Coffee	Lanier
Atkinson	Colquitt	Lowndes
Bacon	Cook	McIntosh
Berrien	Decatur	Pierce
Brantley	Echols	Seminole
Brooks	Glynn	Thomas
Camden	Grady	Ware
Charlton	Irwin	Wayne
Clinch	Jeff Davis	

[fol. 444]

1.

FREEMAN & SONS, INC.

Distributor Name

546 North Myrtle Avenue P. O. Box 2457

Street Address

Jacksonville, Florida

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 11, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Florida:

City of Jacksonville and vicinity.

[fol. 445]

1.

FREEMAN & SONS, INC.

Distributor Name

1310 New Tampa Highway

Street Address

Lakeland, Florida

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 11, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Florida:

City of Lakeland and vicinity.

[fol. 449]

1.

FREEMAN & SONS, INC.

Distributor Name

3638 N. E. 2nd Avenue

Street Address

Miami, Florida

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 11, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Florida:

State of Florida except 10 counties West of the
Appalachicola River.

In Georgia, counties of—

Decatur

Clinch

Pierce

Grady

Seminole

Brantley

Brooks

Thomas

Glynn

Lowndes

Lanier

Camden

Echols

Ware

Charlton

[fol. 451]

1. HUNT TRUCK SALES & SERVICE, INC.
(MIAMI DIVISION)

Distributor Name

4333 Northwest 27th Avenue

Street Address

Miami, Florida

City and State

2 (a)i Date of Contract July 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Florida:

Counties of—

~~Broward~~

Hardee

Monroe

~~Charlotte~~

Hendry

Okeechobee

Collier

Highlands

Palm Beach

Dade

Indian River

St. Lucie

DeSoto

Lee

Glades

Martin

[fol. 454]

1. ORLANDO WHITE TRUCKS, INC.

Distributor Name

1800 N. Orange Blossom Trail

Street Address

Orlando, Florida

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Florida:

Counties of—Brevard

Lake

Orange

Osceola

Seminole

[fol. 457]

1. **HARRIS TRUCK SERVICE COMPANY**

Distributor Name

Cove and Cottendale Highways

Street Address

Panama City, Florida

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Alabama:

Counties of—Houston

Coffee

Geneva

Dale

Henry

State of Florida:

Counties of—Bay

Jackson

Holmes

Okaloosa

Washington

Walton

[fol. 462]

1. **TRANSPORTATION EQUIPMENT, INC.**

Key Dealer Name

1500 Baker St. (East)

Street Address

Plant City, Florida

City and State

Contracted By

HUNT TRUCK SALES & SERVICE, INC.

Distributor Name

Tampa, Florida

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Florida:

Only the city of Plant City, Florida and its
immediate trade area.

[fol. 467]

1. **HUNT TRUCK SALES & SERVICE, INC.**

Distributor Name

Tampa Street at Platt

Street Address

Tampa, Florida

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Florida:

Counties of— Hillsborough

Manatee

Pinellas

Polk

Sarasota

[fol. 475]

1. **CHIEF PONTIAC COMPANY, INC.**

Distributor Name

238 West Hancock Avenue

Street Address

Athens, Georgia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Georgia:

Counties of—Banks

Barrow

Clarke

Franklin

Jackson

Madison

Oconee

Oglethorpe

Walton

[fol. 478].

1. **WHITTON MACHINE & EQUIPMENT
COMPANY**

Distributor Name

219-25 Sixth
Street Address

Augusta, Georgia
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Georgia:

Counties of—

Burke	Jenkins	Screven
Columbia	Lincoln	Taliaferro
Glascok	McDuffie	Warren
Jefferson	Richmond	

State of South Carolina:

Counties of—

Abbeville
Aiken
Allendale
Bamberg
Barnwell
Edgefield
McCormick

[fol. 490]

1. COASTAL WHITE TRUCK COMPANY, INC.

Distributor Name

2402 Bay St. Extension

Street Address

Savannah, Georgia

City and State

2 (a)i Date of Contract October 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Georgia:

Counties of—

Bryan

Effingham

Long

Bulloch

Emanuel

Montgomery

Candler

Evans

Tattnall

Chatham

Liberty

Toombs

Johnson

Laurens

Treutlen

Dodge

Wheeler

Telfair

Ben Hill

Wilcox

Pulaski

Bleckley

State of South Carolina:

Counties of—Beaufort

Hampton

Jasper

[fol. 495]

1. SCHUMAN CARRIAGE COMPANY, LIMITED

Distributor Name

Beretania & Richards Streets

Street Address

Honolulu 4, Territory of Hawaii

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Territory of Hawaii

[fol. 496]

1. SCHUMAN CARRIAGE COMPANY, LTD.

Distributor Name

Beretania & Richards Streets

Street Address

Honolulu, Territory of Hawaii

City and State

2 (a)i Date of Contract or Assumption Thereof
July 31, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

Territory of Hawaii

[fol. 498]

1.

MAUI MOTORS CO. LIMITED

Key Dealer Name

1967 Main Street

Street Address

Wailuku, Maui, Territory of Hawaii

City and State

Contracted By

SCHUMAN CARRIAGE COMPANY, LIMITED

Distributor Name

Honolulu, Oahu, Territory of Hawaii

City and State

2 (a)i Date of Contract. January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Entire Island & County of Maui,
which includes the Island of Molokai

[fol. 501]

1. **BOISE WHITE TRUCK & EQUIPMENT, INC.**

Distributor Name

212 South 15th

Street Address

Boise, Idaho

City and State

2 (a)i Date of Contract. January 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Idaho:

Counties of—

Ada

Adams

Blaine

Boise

Camas

Canyon

Cassia

Custer

Elmore

Gem

Gooding

Jerome

Lemhi

Lincoln

Minidoka

Owyhee

Payette

Twin Falls

Valley

Washington

[fol. 502]

1. HOPPER MOTOR COMPANY

Distributor Name

1017 Jefferson Street
Street AddressBoise, Idaho
City and State2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Idaho:

Counties of—

Boise

Butte

Payette

Blaine

Gooding

Washington

Lincoln

Owyhee

Adams

Camas

Elmore

Gem

Custer

Ada

Valley

Lemhi

Canyon

[fol. 507]

1. **HENDERSON MOTORS, INC.**
Key Dealer Name

Box 281
Street Address

Lewiston, Idaho
City and State

Contracted By
JONES WHITE TRUCK COMPANY
Distributor Name

W. 41 Second Avenue, Spokane, Washington
City and State

2 (a)i Date of Contract July 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Idaho:

Counties of—Idaho

Nez Perce
Clearwater
Lewis

[fol. 510]

1. **JACKSON AUTO SERVICE**
Key Dealer Name

Street Address

Roberts, Idaho
City and State

Contracted By

LINDNER AND WOOD WHITE MOTOR SALES
Distributor Name

Salt Lake City, Idaho
City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Idaho:

County of—Jefferson

[fol. 517]

1.

TRUCK CENTER, INC.

Distributor Name

40th & Sycamore

Street Address

Cairo, Illinois

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—

Pulaski	Saline	Hamilton
Alexander	Gallatin	Johnson
Union	Randolph	Pope
Jackson	Perry	Hardin
Williamson	Franklin	Massac

State of Kentucky:

Counties of—

Ballard	Galloway	Hickman
Marshall	Graves	Fulton
McCracken	Carlisle	

State of Missouri:

Counties of—

Perry	Phelps	Wayne
Cape Girardeau	St. Genevieve	Iron
Crawford	Carter	Stoddard
Reynolds	Ripley	Mississippi
Bollinger	Dent	Scott
Madison	Butler	Washington

New Madrid—that portion above line diagonally across from the Kentucky state line and including the towns of Lilbourn and New Madrid.

[fol. 534]

1. **GRUENFELDER TRUCK COMPANY**

Distributor Name

1213 9th

Street Address

Highland, Illinois

City and State

2 (a)i Date of Contract June 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—Bond

Fayette

Jersey

Calhoun

Green

Macoupin except the
townships of

Scottsville

Barr

North Palmyra

South Palmyra

North Otter

South Otter

Virden

Girard

Nilwood

Montgomery except the
townships of

Bois D'Arc

Pitnam

Harvel

Madison except the
townships of

Chouteau

Maneoki

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[fol. 538]

1. **UPTOWN WHITE TRUCK COMPANY**

Key Dealer Name

766 N. Broadway

Street Address

Joliet, Illinois

City and State

Contracted By

OTTAWA WHITE TRUCK SALES & SERVICE, INC.

Distributor Name

Ottawa, Illinois

City and State

2 (a)i Date of Contract March 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

County of—Will, excepting townships of—

Wheatland

DuPage

[fol. 547]

1. OSLAGER TRUCK & EQUIPMENT CO.

Dealer Name

1200 Park Avenue

Street Address

Mt. Vernon, Illinois

City and State

Contracted By

OGLE MOTOR COMPANY

Distributor Name

Flora, Illinois

City and State

2 (a)i Date of Contract July 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Marion County to Odin City limit and
Jefferson County

[fol. 532]

1. **HOBSON'S WHITE TRUCK SALES
& SERVICE CORP.**

Distributor Name

3611 South Adams

Street Address

Peoria, Illinois

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned?

State of Illinois:

Counties, of—Knox

Fulton

Marshall

McClellan

Peoria

Stark

Tazewell

Warren

Woodford

[fol. 559]

1. HINTON WHITE TRUCK SALES & SERVICE

Distributor Name

120 Jefferson Street

Street Address

Quincy, Illinois

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—Adams

Brown

Hancock

McDonough

Pike

Schuyler

State of Iowa:

County of—Lee

State of Missouri:

Counties of—Clark

Lewis

Marion

Ralls

Scotland

On May 1, 1955 Selling Territory changed to:

State of Illinois:

Counties of—Adams

Brown

Hancock

McDonough

Pike

Schuyler

State of Iowa:

County of—Lee

State of Missouri:

Counties of—Clark

Lewis

Marion

Ralls

Scotland

Pike

[Fol. 563]

1. **WADDELL WHITE TRUCK SALES, INC.**

Distributor Name

3101 Eleventh

Street Address

Rockford, Illinois

City and State

- 2 (a)i Date of Contract January 1, 1955
- 2 (a)ii Termination Date of Contract
- 2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—Moone, Carroll, that part of DeKalb north of the southern boundaries of the townships of Milan, Afton and Pierce, that part of Kane north of the southern boundaries of the townships of Virgil, Campton, and St. Charles, Joë Daviess, Lee except the townships of Sublette, Brooklyn, and Paw Paw; McHenry, Ogle, Stephenson, that part of Whiteside east of the western boundaries of the townships of Genesee, Hopkins, Hume and Tampico, and Winnebago.

State of Wisconsin:

Counties of—Rock and Walworth.

[fol. 569]

1.

MOUNTZ TRUCK COMPANY

Distributor Name

By Pass 66 and Route 29

Street Address

Springfield, Illinois

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—

Scott

Macon

Mason

Logan

Champaign

Sangamon

Morgan

Menard

Christian

DeWitt

Piatt

Douglas

Cass

Townships of—Scottsville

Barr

North Palmyra

South Palmyra

North Otter

South Otter

Virden

Girard

Nilwood in Macoupin county

Townships of—Bois D'Arc

Pitnam

Harvel in Montgomery county

Counties of—Vermillion excluding parts and
service sales

Ford—except the townships of:

Rogers

Mona

Pella

Brenton

Lyman

On May 1, 1955 Selling Territory changed to:

State of Illinois:

Counties of—

Cass	Logan	Moultrie
Champaign	Macon	Piatt
Christian	Mason	Sangamon
DeWitt	Menard	Scott
Douglas	Morgan	

Counties of—Vermilion—excluding parts and
service sales

Ford—except the townships of:

Rogers	Brenton
Mona	Lyman
Pella	

Townships of—Scottsville

Barr
North Palmyra
South Palmyra
North Otter
South Otter
Virden
Girard
Nilwood all in Macoupin county

Townships of—Bois D'Arc

Pitnam
Harvel all in Montgomery
county

[fol. 575]

1. **ECONOMY TRUCK SALES & SERVICE INC.**

Distributor Name

1207—10th Street

Street Address

Waukegan, Illinois

City and State

2 (a)i. Date of Contract May 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

County of—Lake

•State of Wisconsin:

County of—Kenosha

[fol. 580]

1. **ALLIED TRUCK REPAIR COMPANY**

Key Dealer Name

420 N. Wood River Avenue

Street Address

Wood River, Illinois

City and State

Contracted By

GRUENFELDER TRUCK COMPANY

Distributor Name

Highland, Illinois

City and State

2 (a)i Date of Contract **May 1, 1958**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—**Jersey**

Calhoun

In Madison County the cities of

Wood River, Roxana and

Alton.

In Macoupin County the cities of

Piasa and Medora

[fol. 592]

1.

REO SALES AND SERVICE

Distributor Name

3601-03 Euclid Avenue

Street Address

East Chicago, Indiana

City and State

- 2 (a)i Date of Contract or Assumption Thereof
June 5, 1957
- 2 (a)ii Termination Date of Contract
Contract Replaced by New Contract on
January 1, 1958
Termination Date of New Contract
- 2 (b) Selling Territory Assigned:
State of Indiana: Indiana Harbor and vicinity.

[fol. 595]

1.

REERICKS MOTOR SERVICE, INC.

Distributor Name

121 E. Euclid Street

Street Address

Evansville, Indiana

City and State

- 2 (a)i Date of Contract January 1, 1955
- 2 (a)ii Termination Date of Contract
- 2 (b) Selling Territory Assigned:
State of Illinois:
Counties of--Wabash
White
State of Indiana:
Counties of--Gibson
Pike
Posey
Vanderburg
Warrick
State of Kentucky:
Counties of--Henderson
Union

[fol. 596]

1.

TITZER'S GARAGE

Distributor Name

1120 N. Fares Avenue

Street Address

Evansville, Indiana

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Knox	Gibson
Daviess	Posey
Martin	Vanderburgh
DuBois	Warrick
Pike	Spencer

State of Kentucky:

Counties of—Hancock	Muhlenburg
Daviess	Hopkins
Henderson	Caldwell
Union	Trigg
Webster	Christian
McLean	Todd
Ohio	Logan
Butler	

State of Illinois:

Counties of—Richland	Wabash
Lawrence	White
Edwards	

[fol. 601]

1.

COOMLER SALES, INC.

Distributor Name

6921 U. S. Highway 30 East

Street Address

Fort Wayne, Indiana

City and State

2 (a)i Date of Contract January 2, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Allen

Adams

DeKalb

Huntington

LaGrange

Noble

Steuben

Wells

Whitley

[fol. 606]

1.

GARY WHITE SALES & SERVICE, INC.

Distributor Name

Fifth Avenue at Chase

Street Address

Gary, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Lake, Porter, and that part of
 Newton north of Route 14, and that part of
 Jasper north of Route 14.

State of Illinois:

That part of Cook County south 127th Street
 with the exception of the following accounts
 in Chicago Heights: Austgen Express & Stor-
 age Co., Chicago Heights Midway Motor Ex-
 press, and La Bue Coal Company.

[fol. 610]

1.

**DOC'S WHITE TRUCK SALES &
SERVICE, INC.**

Distributor Name

401 North Third

Street Address

Lafayette, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Benton, Carroll, Clinton, Fountain, Montgomery, that part of Newton south of Route 14, that part of Jasper south of Route 14, Tippecanoe, Warren and White

[fol. 618]

1.

WOLF BROTHERS

Distributor Name

1414 Western Avenue

Street Address

Marion, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Cass

Grant

Howard

Miami

Tipton

Wabash

[fol. 622]

1.

**WHITE TRUCK & EQUIPMENT
COMPANY, INC.**

Distributor Name

State Road 67, South (P. O. Box 288)

Street Address

Muncie, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Delaware

Blackford

Fayette

Franklin

Henry

Jay

Madison

Randolph

Union

Wayne

[fol. 623]

1.

**WHITE TRUCK AND EQUIPMENT
COMPANY, INC.**

Distributor Name

State Road 67 S., P. O. Box 288

Street Address

Muncie, Indiana

City and State

2 (a)i Date of Contract or Assumption Thereof
March 25, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Delaware

Blackford

Fayette

Franklin

Henry

Jay

Madison

Randolph

Union

Wayne

[fol. 631]

1. **SOUTH BEND TRUCK & EQUIPMENT, INC.**

Distributor Name

3719 Western Avenue

Street Address

South Bend, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Elkhart

Fulton

Kosciusko

La Porte

Marshall

Pulaski

St. Joseph

Starke

State of Michigan:

Counties of—Berrien

Cass

[fol. 634]

1. **WILLEY WHITE TRUCK COMPANY**

Distributor Name:

2220 Wabash Street

Street Address

Terre Haute, Indiana

City and State

2 (a)i. Date of Contract .. January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

Counties of—Clark

Edgar

State of Indiana:

Counties of—Clay

Owen

Sullivan

Greene

Parke

Vermillion

Vigo—with the exception of East-
 ern Motor Express, Inc.
 Vigo Tractor Rentals, Inc.
 and/or any subsidiary or
 affiliated companies.

[fol. 640]

1.

MC CORMICK, INCORPORATED

Distributor Name

U. S. 41 South

Street Address

Vincennes, Indiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Indiana:

Counties of—Davies

Knox

Lawrence

Martin

State of Illinois:

Counties of—Crawford

Lawrence

[fol. 642]

1. DAVENPORT WHITE SALES & SERVICE

Distributor Name

534 14th

Street Address

Bettendorf, Iowa

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of—Jackson, Clinton, Scott, Louisa,
Muscatine, Des Moines, and that part of Cedar
—South of State Highway #1 and east of State
Highway #38 and excluding all of the City of
Tipton.

State of Illinois:

Counties of—Mercer, Rock Island, Henderson,
Henry and that part of Whiteside west of the
western boundaries of Genessee, Hopkins,
Hume, and Tampico Townships.

[fol. 647]

1. TRANSPORT TRUCK & EQUIPMENT, INC.

Distributor Name

2519 16th Avenue S.W.

Street Address

Cedar Rapids, Iowa

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of—Benton, Dubuque, Iowa, Jones,
Johnson, Linn, and that part of Cedar—north
of State Highway #1 and west of State High-
way #38 and including all of the City of Tipton.

[fol. 652]

1.

AUSTIN CRABBS, INC.

Distributor Name

1010 Faragut Avenue, S., P. O. Box 816

Street Address

Davenport, Iowa

City and State

2 (a)i Date of Contract or Assumption Thereof
July 25, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of—Clinton

Scott

Muscatine

State of Illinois:

Counties of—Whiteside

Henry

Rock Island

Mercer

{fol. 654}

1. CAPITAL WHITE TRUCK, INC.

Distributor Name

1201 East Euclid

Street Address

Des Moines, Iowa

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of—

Humboldt	Grundy	Union
Hardin	Carroll	Wapello
Story	Hamilton	Tama
Guthrie	Boone	Decatur
Poweshiek	Jasper	Van Buren
Warren	Madison	Mahaska
Washington	Greene	Clarke
Monroe	Keokuk	Jefferson
Ringgold	Lucas	Wayne
Webster	Henry	Pocahontas
Adair	Appanoose	Butler
Davis	Marshall	Franklin
Wright	Dallas	Polk
Calhoun	Marion	

[fol. 657]

1.

MILLS SALES & SERVICE

Distributor Name

3403 Jackson Street

Street Address

Dubuque, Iowa

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 2, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of Clayton

Dubuque

Delaware

Jackson

Allamaker

State of Illinois:

Counties of—J. A. Daviess

Carroll

[fol. 667] .

1.

SIBLEY SALES & SERVICE

Key Dealer Name

.....
Street AddressSibley, Iowa
City and State

Contracted By

CONDON MOTOR CO.

Distributor Name

Sioux City, Iowa
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Non exclusive selling rights in following counties—Osceola

Dickinson

Clay

O'Brien

[fol. 670]

1.

BARGER BROTHERS

Distributor Name

501 West 8th Street

Street Address

Sioux City, Iowa

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on,
January 7, 1958.

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Iowa:

Counties of—Osceola

Dickinson

Sioux

O'Brien

Clay

Plymouth

Cherokee

Buena Vista

Woodbury

Ida

Sac

Monona

Crawford

State of Nebraska:

Counties of—Holt

Boyd

Knox

Cedar

Dixon

Dakota

Wayne

Pierce

Antelope

Thurston

Wheeler

Boone

Cuming

Stanton

Madison

Burt

State of South Dakota:

Counties of—Clay

Union

Yankton

[fol. 678]

1.

QUIGG IMPLEMENT COMPANY

Distributor Name

3501 10th Street

Street Address

Great Bend, Kansas

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Kansas: Great Bend and vicinity.

[fol. 686]

1.

SALINA WHITE TRUCKS, INC.

Distributor Name

812-820 North 9th Street

Street Address

Salina, Kansas

City and State

2 (a)i Date of Contract July 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kansas:

Counties of—

Cheyenne

Lincoln

Rooks

Clay

Logan

Russell

Cloud

Mitchell

Saline

Decatur

Morris

Sheridan

Dickinson

Norton

Sherman

Ellis

Osborne

Smith

Ellsworth

Ottawa

Thomas

Geary

Phillips

Trego

Gove

Rawlins

Wallace

Graham

Republic

Washington

Jewell

Riley

[fol. 691]

1.

LATTER, INC.

Distributor Name

304 West First Street

Street Address

Topeka, Kansas

City and State

2 (a)i Date of Contract August 5, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kansas:

Counties of—Douglas

Jackson

Jefferson

Pottawatomie

Shawnee

Wabaunsee

[fol. 694]

1.

WICHITA WHITE TRUCK SALES, INC.

Distributor Name

2655 North Broadway

Street Address

Wichita, Kansas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kansas:

Counties of—Butler

Chautauqua

Cowley

Elk

Greenwood

Harper

Harvey

McPherson

Marion

Montgomery

Sedgwick

Sumner

Wilson

Woodson

Kingman

[fol. 696]

1. **WICHITA WHITE TRUCK SALES, INC.**

Distributor Name

4655 N. Broadway, P. O. Box 2056—Main Station

Street Address

Wichita, Kansas,

City and State

2 (a)i Date of Contract or Assumption Thereof
April 15, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Kansas:

Counties of—

Butler	Harper	Sedgwick
Chautauqua	Harvey	Sumner
Cowley	Melerson	Wilson
Elk	Marion	Woodson
Greenwo	Montgomery	Kingham

[fol. 699]

1. **FARSON EQUIPMENT COMPANY**

Key Dealer Name

1041 Greenup Avenue

Street Address

Ashland, Kentucky

City and State

Contracted By

MUELLER WHITE TRUCK COMPANY, INC.

Distributor Name

Huntington, West Virginia

City and State

2 (a)i Date of Contract **March 10, 1957**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky: . . .

Counties of—Boyd

Carter

Greenup

Lawrence

State of Ohio:

County of—Lawrence

[fol. 703]

1.

KING'S GARAGE

Key Dealer Name

206 Beatty Avenue

Street Address

Corbin, Kentucky

City and State

Contracted By

THE PARKS TRUCK & EQUIPMENT COMPANY

Distributor Name

Knoxville, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky:

Counties of—Knox

Laurel

Whitley

[fol. 708]

1.

WHITE SALES & SERVICE

Distributor Name

418 South Upper Street

Street Address

Lexington, Kentucky

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky:

Counties of—Bourbon

Boyle

Clark

Fayette

Garrard

Jessamine

Madison

Mercer

Scott

Woodford

[fol. 722]

1. **TRUEDELL WILSON SALES & SERVICE**

Direct Key Dealer Name

304 West Mt. Vernon St.

Street Address

Somerset, Kentucky

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky:

Counties of—Casey

Clinton

Lincoln

McCreary

Pulaski

Rockcastle

Russell

Wayne

[fol. 724]

1. **PEARCE MOTOR COMPANY**

Direct Key Dealer Name

1202 Fourth Street

Street Address

Alexandria, Louisiana

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Louisiana:

Parishes of—Avoyelles

Grant

LaSalle

Rapides

Vernon

[fol. 727]

1.

**SOUTHWEST WHITE-
AUTOCAR TRUCK COMPANY**

Distributor Name

East Broad & Haskell Street

Street Address

Lake Charles, Louisiana

City and State

2 (a)i Date of Contract September 2, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Louisiana:

Parishes of—Calcasieu

Acadia

Beauregard

Vermillion

Allen

Lafayette

Jefferson Davis

St. Martin

Cameron

[fol. 733]

1.

PETERSON SALES COMPANY, INC.

Distributor Name

948 N. Market

Street Address

Shreveport, Louisiana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Louisiana:

Parishes of—

Bienville

DeSoto

Natchitoches

Union

Bossier

Franklin

Ouachita

Webster

Caddo

Jackson

Red River

Winn

Caldwell

Lincoln

Richland

Claiborne

Morehouse

Sabine

[fol. 735]

1. **CONSOLIDATED TRUCK LEASING
CORPORATION**

Distributor Name

6016 St. Vincent P. O. Box 6123

Street Address

Shreveport, Louisiana

City and State

2 (a)i Date of Contract or Assumption Thereof
January 28, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Louisiana:

Parishes of—Caddo
Bossier
DeSoto
Webster

Red River
Caliborne
Sabrine
Bienville

State of Texas:

Counties of—Panola
Shelby
Gregg
Harrison
Marion

[fol. 738]

1. **PETERSON WHITE TRUCK CORP.**

Key Dealer Name

120 Center Street

Street Address

Auburn, Maine

City and State

Contracted By

THE HENLEY KIMBALL COMPANY

Distributor Name

Portland, Maine

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Maine:

Territory includes Androscoggin County and Oxford County, north of Stow, the Waterfords and Sweden. Franklin County in coextensive with distributor Kennebec County, West of Kennebec River, with exceptions of cities of Gardiner, Waterville, and Augusta, to be co-extensive with distributor

[fol. 744]

1. **THE HENLEY KIMBALL COMPANY**

Distributor Name

380 Forest Ave.

Street Address

Portland, Maine

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Maine

[fol. 750]

1. **FEDERAL BALTIMORE TRUCK CO., INC.**

Distributor Name

2801 Sisson Street

Street Address

Baltimore, Maryland

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Maryland:

City of Baltimore.

Counties of—Carroll

Baltimore

Hartford

Cecil

Howard

Anne Arundel

Calvert

[fol. 752]

1.

THOMPSON MOTORS

Distributor Name

600 Dover Road

Street Address

Easton, Maryland

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Maryland:

County of—Talbot

[fol. 754]

1.

KEY MOTOR SALES

Key Dealer Name

106 E. Patrick Street

Street Address

Frederick, Maryland

City and State

Contracted By

TRI-STATE MOTOR SALES, INC.

Distributor Name

Hagerstown, Maryland

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Maryland:

County of—Frederick

[fol. 755]

1.

RONEY MOTOR COMPANY

Distributor Name

622 N. Market Street

Street Address

Frederick, Maryland

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Maryland:

County of Frederick, towns and communities of
Union Bridge—Taneytown
and New Windsor in Car-
roll County.

[fol. 758]

1.

TRI-STATE MOTOR SALES, INC.

Distributor Name

426 South Cannon Avenue

Street Address

Hagerstown, Maryland

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Maryland:

Counties of—Allegany
Frederick
Garrett
Washington

State of Virginia:

Counties of—Clarke
Frederick
Rappahannock
Warren

State of West Virginia:

Counties of—Berkley
Grant
Hampshire
Hardy
Jefferson
Mineral
Morgan

[fol. 759]

1.

RENNER'S GARAGE

Distributor Name

1101 Virginia Avenue

Street Address

Hagerstown, Maryland

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Maryland:

County of—Washington

State of West Virginia:

Counties of—Morgan

Berkeley

Jefferson

[fol. 763]

1. **NORFOLK WHITE TRUCK SALES
& SERVICE, INC.**

Distributor Name

917 South Salisbury Boulevard
Street Address

Salisbury, Maryland
City and State

2 (a)i Date of Contract August 21, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Maryland:

Counties of—Wicomico

Worcester

Somerset

Dorchester

Talbot and lower half of

Caroline County

State of Virginia:

Counties of—Accomac

Northampton

State of Delaware:

County of—Sussex

[fol. 765]

1.

**TRUCK EQUIPMENT &
SERVICE CORPORATION**

Distributor Name

44 Ramak Circle South

Street Address

Agawam, Massachusetts

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
August 12, 1957

Termination Date of New Contract :

2 (b) Selling Territory Assigned:

State of Massachusetts:

Counties of—Hampshire

Hampden

State of Connecticut:

Townships of—Union, Stafford and Somers in
Tolland County.

[fol. 766]

1.

TRUCK CENTER, INC.

Distributor Name

1033 Massachusetts Avenue

Street Address

Boston, Massachusetts

City and State

2 (a)i Date of Contract or Assumption Thereof
November 14, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Massachusetts:

Counties of—Worcester

Middlesex

Essex

Suffolk

Norfolk

Plymouth

[fol. 771]

1.

KANE & BENSON INC.

Distributor Name

1087 No. Montello St.

Street Address

Brockton, Mass.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Massachusetts:

Counties of--Plymouth

Barnstable

County of--Bristol

Townships of--Taunton

Raynham

Easton

Mansfield

Berkley

County of--Norfolk:

Townships of--Westwood

Canton

Randolph

Braintree

Foxboro

Norwood

Stoughton

Sharon Avon

Holbrook

Weymouth

Walpole

Cohasset

[fol. 778]

1.

THE BRACKEN COMPANY INC.

Distributor Name

610 So. Union Street

Street Address

Lawrence, Mass.

City and State

2 (a)i Date of Contract August 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

Commonwealth of Massachusetts:

Middlesex County—Area north of and including
Littleton Common, Carlisle, Billerica, No. Wil-
mington and N. Reading.Essex County—Area north of and including
following towns: Middleton, Danvers, Danvers-
port and Beverly.

State of New Hampshire: Entire State

State of Vermont: Windsor County

[fol. 781]

1.

BREWER BROTHERS, INC.

Distributor Name

277 Ashland Street

Street Address

North Adams, Massachusetts

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Massachusetts: North Adams and
vicinity

[fol. 784]

1.

STAPLETON, INC.

Distributor Name

278 Tyler St.

Street Address

Pittsfield, Mass.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Vermont:

County of—Bennington

State of Massachusetts:

County of—Berkshire

State of Connecticut:

County of—Litchfield:

Townships of—Salisbury

North Canaan

Canaan

Norfolk

Sharon

Cornwall

Goshen

[fol. 785]

1.

BREWER BROTHERS, INC.

Distributor Name

196 South Street

Street Address

Pittsfield, Massachusetts

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Massachusetts:

County of—Berkshire

State of Vermont:

Counties of—Bennington

Franklin

Rutland

Lamaille

Addison

Washington

Chittenden

Grand Isle

and in Orange County, the town-
ships of—Orange

Williamston

Washington

Brookfield

Chelsea

Braintree

Randolph

and Windsor County, the town-
ships of—Bethel

Rochester

Stockbridge

State of Connecticut:

County of—Litchfield

Townships of—North Canaan

Canaan

Cornwall

Norfolk

Salisbury

Sharon

[fol. 787]

1. Frank L. Sorenti
d.b.a.
FRANK L. SORENTI WHITE TRUCKS
Key Dealer Name
Rotary
Street Address
Sagamore, Mass.
City and State
Contracted By
KANE AND BENSON, INC.
Distributor Name
Brockton, Mass.
City and State

- 2 (a)i Date of Contract June 1, 1956
2 (a)ii Termination Date of Contract
2 (b) Selling Territory Assigned:
State of Massachusetts:
Barnstable County—and the towns of Ware-
ham, E. Wareham, S. Wareham, Rochester,
Marion and Mattapoisett located in Plymouth
County

[fol. 789]

1. **MORAN SALES COMPANY INC.**
Distributor Name
461 Worthington Street
Street Address
Springfield, Mass.
City and State
2 (a)i Date of Contract January 1, 1955
2 (a)ii Termination Date of Contract
2 (b) Selling Territory Assigned:
State of Massachusetts:
Counties of—Hampden
Hampshire
Franklin
State of Vermont:
County of—Windham

[fol. 793]

1. THE HENLEY KIMBALL COMPANY

Distributor Name

235 Shrewsbury Street

Street Address

Worcester, Mass.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Massachusetts:

County of—Worcester and

Middlesex:

Townships of—Ashby

Ashland

Ayer

Boxboro

Groton

Holliston

Hopkinton

Hudson

Littleton

Marlboro

Maynard

Pepperell

Shirley

Stow

Townsend

[fol. 801]

1.

ROY A. LEE

Key Dealer Name

Route 10

Street Address

Alpena, Michigan

City and State

Contracted By**WHITE TRUCK SALES OF SAGINAW, INC.**

Distributor Name

Saginaw, Michigan

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Alpena

Alcona

Tosco

Montmorency

Presque Isle

[fol. 809]

1.

DELTA SALES & SERVICE

Distributor Name

111 South 17th Street

Street Address

Escanaba, Michigan

City and State

2 (a)i Date of Contract July 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Menominee

Delta

Alger

Schoolcraft

Luce

Mackinac

Chippewa

[fol. 812]

1. **DERMODY WHITE TRUCK COMPANY, INC.**

Distributor Name

1456 28th Street, S.W.

Street Address

Grand Rapids, Michigan

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Kent

Newaygo

Mecosta

Oceana

Montcalm

Ottawa

Muskegon

On June 1, 1956 Selling Territory changed to:

State of Michigan:

Counties of—Antrim

Mason

Benzie

Mecosta

Charelvoix

Missaukee

Emmet

Montcalm

Grand Traverse

Muskegon

Kalkaska

Newaygo

Kent

Oceana

Lake

Osceola

Leelanau

Ottawa

Manistee

Wexford

[fol. 814]

1. **DERMODY WHITE TRUCK COMPANY, INC.**

Distributor Name

1456 28th Street, S.W.

Street Address

Grand Rapids, Michigan

City and State

2 (a)i Date of Contract or Assumption Thereof
March 25, 19582 (a)ii Termination Date of Contract
Contract Replaced by New Contract on
Termination Date of New Contract2 (b) Selling Territory Assigned:
State of Michigan:

Counties of—

Antrim	Lake	Muskegon
Benzie	Leelanau	Newaygo
Charlevoix	Manistee	Oceana
Emmet	Mason	Osceola
Grand Traverse	Mecosta	Ottawa
Kalkaska	Missaukee	Wexford
Kent	Montcalm	

[fol. 818]

1. **HANCOCK WHITE SALES, INC.**

Distributor Name

1028 Ethel Avenue

Street Address

Hancock, Michigan

City and State

2 (a)i Date of Contract July 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—	Keweenaw	Marquette
	Houghton	Dickinson
	Baraga	Iron
	Ontonagon	Gogebie

[fol. 821]

1.

Wm. C. Jaress
d.b.a.

WOLVERINE WHITE TRUCK SALES

Distributor Name

110 North Van Dorn Street

Street Address

Jackson, Michigan

City and State

2 (a)i Date of Contract October 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Branch

Calhoun

Hillsdale

Jackson

Washtenaw

[fol. 822]

1.

ERVEN SALES & SERVICE

Distributor Name

951 E. South Street

Street Address

Jackson, Michigan

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 14, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Jackson

Calhoun

Branch

Hillsdale

Washtenaw

[fol. 825]

1. CROOKSTON WHITE TRUCK COMPANY

Distributor Name

Crosstown Parkway & Mills Street

Street Address

Kalamazoo, Michigan

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Allegan

Barry

Kalamazoo

St. Joseph

Van Buren

[fol. 827]

1. CROOKSTON WHITE TRUCK COMPANY

Distributor Name

Crosstown Parkway & Mills Street

Street Address

Kalamazoo, Michigan

City and State

2 (a)i Date of Contract or Assumption Thereof
April 9, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Allegan

Barry

Kalamazoo

St. Joseph

Van Buren

[fol. 829]

1. **D & K WHITE TRUCK COMPANY**

Distributor Name

2827 South Cedar Street

Street Address

Lansing, Michigan

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Clinton

Eaton

Ingham

Ionia

Livingston

Shiawassee

[fol. 831]

1. **D. & K. WHITE TRUCK COMPANY**

Distributor Name

2827 So. Cedar Street

Street Address

Lansing, Michigan

City and State

2 (a)i Date of Contract or Assumption Thereof
April 9, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—Clinton

Eaton

Ingham

Ionia

Livingston

Shiawassee

[fol. 833]

1. **TED FULSHER MOTOR SALES**

Distributor Name

Corner Hampton & Division Streets

Street Address

Marquette, Michigan

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 7, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Michigan: Entire Upper Penn. of Michi-
gan except the County of
Gogebic

[fol. 837]

1.

N & K SERVICE & PARTS, CO.

Key Dealer Name

2501 Henry Street

Street Address

Muskegon, Michigan

City and State

Contracted By

DERMODY WHITE TRUCK CO. INC.

Distributor Name

Grand Rapids, Michigan

City and State

2 (a)i Date of Contract **January 24, 1957**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of — Muskegon — excluding the accounts of Wolverine Express, Inc. and Interlake Equipment Corporation (but not brokers).

Oceana

Newaygo—excluding the account of Gilliland Transfer (but not brokers).

Cities of Grand Haven, Spring Lake and area north to the Muskegon County line in Ottawa County.

[fol. 843]

1.

**REO TRUCK SALES AND
SERVICE COMPANY****Distributor Name****314 N. Walter Street****Street Address****Saginaw, Michigan****City and State**2 (a)i **Date of Contract or Assumption Thereof**
June 5, 19572 (a)ii **Termination Date of Contract****Contract Replaced by New Contract on**
January 1, 1958**Termination Date of New Contract**2 (b) **Selling Territory Assigned:****State of Michigan:****Counties of—Saginaw****Midland****Tuscola****Gladwin****Huron****Arenac****Sanilac****Iosco****Bay****Alcona****Alpena**

[fol. 844]

1.

JOHNSON WHITE COMPANY

Distributor Name

2100 South Outer Drive

Street Address

Saginaw, Michigan

City and State

2 (a)i Date of Contract March 24, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Michigan:

Counties of—

Alcona	Gratiot	Otsego
Alpena	Huron	Presque Isle
Arenac	Iosco	Roscommon
Bay	Isabella	Saginaw
Cheboygan	Midland	Sanilac
Clare	Montmorency	Tuscola
Crawford	Ogemaw	
Gladwin	Oscoda	

[fol. 848]

1.

JOHNSRUD & WANGEN

Key Dealer Name

223 E. Williams

Street Address

Albert Lea, Minnesota

City and State

Contracted By

WILCOX & CHESLEY INC.

Distributor Name

Mankato, Minnesota

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Minnesota:

City of—Albert Lea

County of—Freeborn

[fol. 852]

1.

MYERS MOTORS, INC.

Distributor Name

412 East First Street

Street Address

Duluth 2, Minnesota

City and State

- 2 (a)i Date of Contract October 1, 1955
- 2 (a)ii Termination Date of Contract
- 2 (b) Selling Territory Assigned:

State of Minnesota:

Counties of Aitken, Baltrami, Carlton, Cass,
Cook, Crow Wing, Hubbard, Itasca, Kanabec,
Koochiching, Lake, Lake of the Woods, and
north half of Mille Lacs from Highway 63 and
north, but not including the City of Milaca; Mor-
rison, Pine and Saint Louis.

State of Wisconsin:

Counties of—Ashland,
Bayfield, and
Douglas

[fol. 870]

Harold Anderson

1.

d.b.a.

HAROLD ANDERSON GARAGE

Direct Dealer Name

10th & Gorton

Street Address

Willmar, Minnesota

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Minnesota:

Counties of—Kandiyohi.
Meeker

[fol. 872]

1.

D & J SALES AND SERVICE, INC.

Key Dealer Name

Sunflower at Third Sts.

Street Address

Clarksdale, Mississippi

City and State

Contracted By

SOUTHERN WHITE SALES COMPANY

Distributor Name

Memphis, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Mississippi:

Counties of—Bolivar

Coahoma

Lafayette

Panola

Quitman

Tallahatchie

Yalobusha

[fol. 876]

Samuel B. Platt, III

1.

d.b.a.

PLATT MOTOR COMPANY

Distributor Name

2211 Highway 82 E

Street Address

Columbus, Mississippi

City and State

2 (a)i Date of Contract August 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Mississippi:

Counties of—

Attala	Holmes	Noxubee
Calhoun	Humphreys	Oktibbeha
Carroll	Itawamba	Sunflower
Chickasaw	Leflore	Washington
Choctaw	Lowndes	Webster
Clay	Monroe	Winston
Grenada	Montgomery	

[fol. 881]

Ralph E. Parker and T. C. McFarland

1.

d.b.a.

PARKER'S AUTO SERVICE

Distributor Name

839 S. State Street

Street Address

Jackson, Mississippi

City and State.

2 (a)i Date of Contract April 2, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Louisiana:

Parishes of—East Carroll
Madison.Tensas
West Carroll

State of Mississippi:

Counties of—Amite
Copolah
Hinds
Issaquena
Jefferson
Lawrence
LeakeLincoln
Madison
Rankin
Sharkey
Simpson
Warren
Yazoo

On April 2, 1956 Selling Territory changed to:

State of Louisiana:

Parishes of—East Carroll
West CarrollMadison
Tensas

State of Mississippi:

Counties of—Claiborne
Copolah
Hinds
Issaquena
Lawrence
Leake
LincolnMadison
Rankin
Sharkey
Simpson
Warren
Yazoo

[fol. 886]

1. **TRUCK CENTER OF MISSOURI, INC.**
Key Dealer Name

.....
Street Address

Cape Girardeau, Missouri
City and State

Contracted By
TRUCK CENTER, INC.
Distributor Name

Cairo, Illinois
City and State

2 (a)i Date of Contract April 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Missouri:

Counties of—

Perry	Phelps	Wayne
Cape Girardeau	St. Geneveive	Iron
Crawford	Carter	Stoddard
Renolds	Ripley	Washington
Bollinger	Dent	Scott
Madison	Butler	

[fol. 888]

1. **L. C. HUDSON & COMPANY, INC.**
Direct Dealer Name

Junction Highways 10 & 24
Street Address

Carrollton, Missouri
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Missouri:

Counties of—Carroll and
Chariton.

[fol. 898]

1.

BAILEY WHITE TRUCKSDirect ~~Key~~ Dealer Name

1213 East Normal

Street Address

Kirksville, Missouri

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Missouri:

Counties of—Adair

Putnam

Schuyler

Knox

[fol. 904]

1.

HANSEN-MEAD MOTOR COMPANY, INC.

Distributor Name

424 South 8th Street

Street Address

St. Joseph, Missouri

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Missouri:

Counties of—Andrew

Atchison

Buchanan

Holt

Nodaway

Worth

Gentry

DeKalb

[fol. 913]

1. **SPRINGFIELD WHITE TRUCKS, INC.**

Distributor Name

Commercial at Glenstone

Street Address

Springfield, Missouri

City and State

2 (a)i Date of Contract July 2, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Missouri:

Counties of—

St. Clair

Polk

Taney

Webster

Douglas

Lawrence

Hickory

Dallas

Ozark

Dade

Barry

Wright

Camden

Henry

Howell

Texas

Laclede

Oregon

Cedar

Stone

Shannon

Christian

Greene

Pulaski

[fol. 918]

1. **BILLINGS WHITE TRUCK COMPANY**

Distributor Name

1007 First Avenue North

Street Address

Billings, Montana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

Counties of—

Phillips	Yellowstone	Lewis &
Valley	Carbon	Clark
Daniels	Richland	Beaverhead
Sheridan	Dawson	Powell
Roosevelt	Wibaux	Broadwater
McCone	Custer	Jefferson
Garfield	Fallon	Deer Lodge
Fergus	Treasure	Silver Bow
Petroleum	Rosebud	Gallatin
Wheatland	Powder River	Madison
Golden Valley	Carter	Blaine
Park	Big Horn	Meagher
Musselshell	Glacier	Judith Basin
Prairie	Toole	Chouteau
Sweetgrass	Pondera	Hill Cascade
Stillwater	Teton	Liberty

State of Wyoming:

Counties of—Park

Big Horn
Sheridan

[fol. 922]

1.

GREAT FALLS WHITE CO.

Distributor Name

315 4th St. South

Street Address

Great Falls, Montana

City and State

2 (a)i Date of Contract April 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

Great Falls Trade Area as follows:

Counties of—Cascade	Teton
Chouteau	Pondera
Liberty	Toole
Hill	Glacier

[fol. 925]

1.

FRONTIER MOTORS, INC.

Key Dealer Name

801 N. Last Chance Gulch

Street Address

Helena, Montana

City and State

Contracted By

BILLINGS WHITE TRUCK CO.

Distributor Name

1007 1st Ave. North, Billings, Montana

City and State

2 (a)i Date of Contract April 7, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

All territory in Helena trade area as follows:

County of—Lewis and Clark

[fol. 927]

1. **KALISPEL SERVICE COMPANY**

Key Dealer Name

401 First Avenue East

Street Address

Kalispell, Montana

City and State

Contracted By

JONES WHITE TRUCK COMPANY

Distributor Name

Spokane, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana;

Flathead County and North Half Lake County
County

[fol. 929]

1.

CENTRAL MOTOR SALES

Key Dealer Name

Street Address

Lewiston, Montana

City and State

Contracted By

BILLINGS WHITE TRUCK CO.

Distributor Name

Billings, Montana

City and State

2 (a)i Date of Contract * January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

County of—Fergus

{fol. 931}

1.

WALTER'S REPAIR SHOP

Dealer Name

.....
Street Address

Miles City, Montana

City and State

Contracted By

BILLINGS WHITE TRUCK COMPANY

Distributor Name

Billings, Montana

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

County of—Custer

236

[fol. 933]

1. **TABER WHITE TRUCK COMPANY**

Key Dealer Name

Box 392

Street Address

Missoula, Montana

City and State

Contracted By

JONES WHITE TRUCK COMPANY

Distributor Name

Spokane, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

Counties of—Missoula

Granate

Ravalli

and South half of Lake County

[fol. 938]

1.

TAYLOR MOTORS

Dealer Name

.....
Street Address**Wolf Point, Montana**
City and State

Contracted By

BILLINGS WHITE TRUCK COMPANY

Distributor Name

Billings, Montana
City and State2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Montana:

County of—**Roosevelt**

[fol. 946]

1.

KENT'S SUPER SERVICE

Distributor Name

Highway U. S. 6
Street Address**Hastings, Nebraska**
City and State2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
May 7, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Nebraska:

County of—**Adams**

[fol. 948]

1. **NELSON MOTOR COMPANY**

Key Dealer Name

1103 East 25th

Street Address

Kearney, Nebraska

City and State

Contracted By

KENT'S SUPER SERVICE

Distributor Name

Hastings, Nebraska

City and State

2 (a)i Date of Contract or Assumption Thereof
May 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Nebraska:

County of—Buffalo

[fol. 956]

1. **FLOYD'S SALES & SERVICE**

Distributor Name

1202 South Broadway

Street Address

Scottsbluff, Nebraska

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Nebraska:

Counties of—Scotts Bluff

Sioux

Banner

Kimball

Dawes

Box Butte

Morrill

Sheridan

Garden

[fol. 959]

1.

**MADDOX MOTOR CO.—
WHITE TRUCK DIV.**

Distributor Name

1403 Illinois

Street Address

Sidney, Nebraska

City and State

2 (a) i Date of Contract January 1, 1955

2 (a) ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Nebraska:

Counties of—Cheyenne

Deuel

State of Colorado

Counties of—Logan

Sedgewick

Phillips

Washington

Yuma

[fol. 961]

1. **GENERAL EQUIPMENT COMPANY**

Distributor Name

1501 East Second Street

Street Address

Reno, Nevada

City and State

2 (a)i Date of Contract May 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of California:

Counties of—Alpine, Lassen, Plumas, and
Sierra, except the sales of fire
truck chassis to the State of Cali-
fornia and all Political subdivi-
sions thereof.

State of Nevada:

Counties of—

Churchill

Douglas

Elko

Esmeralda

Eureka

Humboldt

Lander

Lincoln

Lyon

Mineral

Nye

Ormsby

Pershing

Storey

Washoe

White Pine

[fol. 965]

1. DECATO MOTOR SALES INC.

Key Dealer Name

P. O. Box 421 Dartmouth College Highway

Street Address

Lebanon, New Hampshire

City and State

Contracted By

THE BRACKEN COMPANY OF
NEW HAMPSHIRE INC.

Distributor Name

Manchester, New Hampshire

City and State

2 (a)i Date of Contract August 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Hampshire:

Counties of—Grafton
Sullivan

State of Vermont:

Counties of—Windsor

On August 1, 1957 Selling Territory changed to:

State of New Hampshire:

Counties of—Grafton
Sullivan

State of Vermont:

Counties of—Caledonia
Essex
OrangeWindsor—with the exception of
The St. Johnsbury
Trucking Co., Inc.

[fol. 968]

1.

**THE BRACKEN CO. OF
NEW HAMPSHIRE INC.**
Distributor Name

1050 Second Street
Street Address

Manchester, New Hampshire
City and State

2 (a)i Date of Contract August 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Hampshire

State of Vermont:

County of—Windsor

On August 1, 1957 Selling Territory changed to:
State of New Hampshire

State of Vermont:

Counties of—Caledonia

Essex

Orange

Windsor

[fol. 969]

1. REO OF NEW HAMPSHIRE, INC.

Distributor Name

225-7 Willow Street

Street Address

Manchester, New Hampshire

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
August 1, 1957

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Hampshire

State of Vermont:

Counties of—Orleans, Essex and Caledonia,
and Windsor—all townships ex-
cept Bethel, Rochester, Stock-
bridge, Orange—all Townships
except Orange, Williamston,
Washington, Brookfield, Chelsea,
Braintree, Randolph and Tun-
bridge. In the Commonwealth of
Massachusetts, non-exclusive
rights in Middlesex County the
townships of Chelmsford, Twerks-
bury, Dracut, Tyngsboro, Dunsta-
ble, Westford, Carlisle, in Essex
County the townships of Me-
thuen, Lawrence, Andover, N.
Andover, Boxford, Groveland,
Haver-Hill and Lowell.

[fol. 973]

1.

BILL'S
Distributor Name

240 W. Shite Horse Pike
Street Address

Berlin, New Jersey
City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 2, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Jersey:
City of Berlin and vicinity

{fol. 978]

1. **GARDEN STATE WHITE COMPANY**

Distributor Name

Burwood Ave. & Crescent Blvd.

Street Address

Camden, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Counties of—Camden, Gloucester, Salem, Cumberland, Atlantic, Cape May and the Following Townships of Ocean County: Little Egg Harbor, Eaglewood, Stafford, Lacey, Union and Ocean, and the following townships of Burlington county: Cinnaminson, Delran, Delanco, Edgewater Park, Burlington, Willingboro, West Hampton, East Hampton, Northampton, Southampton, Woodland, Bass River, Wadington, Tabernacle, Shamong, Medford, Eyesham, Mount Laurel, Lumberton, Namesport, Moorestown, and Beverly.

[fol. 982]

1. **FRED J. DILLEY T/A CENTRAL GARAGE**

Distributor Name

Rt. 69 & 202

Street Address

Flemington, New Jersey

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

January 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Town of Flemington and vicinity

[fol. 985]

1. **MACCJ LAN MOTORS**

Dealer Name

212 E Moore Street

Street Address

Hackettstown, New Jersey

City and State

Contracted By

HALL & FUHS INC.

Distributor Name

Mountainside, New Jersey

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Hackettstown, County of Warren

[fol. 989]

1.

HUDSON COUNTY MOTORS INC.

Distributor Name

480 Tonnelle Ave.

Street Address

Jersey City, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

County of—Hudson

[fol. 992]

1.

HALL & FUHS INC.

Distributor Name

Route #22

Street Address

Mountainside, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Richmond

State of New Jersey:

Counties of—Hunterdon

Morris

Somerset

Sussex

Union

Warren

[fol. 993]

1.

RAYMOND M. DORRER

Distributor Name

604 Neptune Highway

Street Address

Neptune, New Jersey

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

City of Neptune and vicinity

[fol. 998]

1.

WHITE SALES & SERVICE COMPANY

Distributor Name

State Highway #1 P. O. Box 187

Street Address

New Brunswick, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Counties of—Middlesex

Monmouth

[fol. 999]

1.

MATHIS GARAGE

Dealer Name

First and Central Avenue

Street Address

North Wildwood, New Jersey

City and State

Contracted By

GARDEN STATE WHITE COMPANY

Distributor Name

Merchantville 11, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

All points and places in Cape May County, except Ocean City.

[fol. 1003]

1. **NORTH JERSEY WHITE AUTOCAR, INC.**

Distributor Name

25 Lakeview Avenue

Street Address

Paterson, New Jersey

City and State

2 (a)i Date of Contract January 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Counties of—Bergen

Passaic

State of New York:

County of—Rockland

[fol. 1012]

1. TRENTON WHITE TRUCK COMPANY

Distributor Name

1459 Princeton Ave.

Street Address

Trenton, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

Counties of—Mercer

Burlington—

Townships of—Florence

Bordentown

Chesterfield

Mansfield

North Hanover

Pemberton

New Hanover

Springfield

Ocean—

Townships of—Plumstead

Jackson

Lakewood

Brick

Dover

Manchester

Berkeley

State of Pennsylvania:

County of—*Bucks—*

Townships of—Bensalem

Bristol

Falls

Lower Makefield

Upper Makefield

Newton

Solisbury

Middletown

Wrightstown

[fol. 1013]

1. **WEINMANN'S REO TRUCK COMPANY**

Distributor Name

642 E. State Street

Street Address

Trenton, New Jersey

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 7, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

City of Trenton and vicinity

State of Pennsylvania:

County of—Buck

Townships of—Solesbury

Upper Makefield

Lower Makefield

Newton

Falls

County of—Cumberland

[fol. 1018]

1. GARDEN STATE WHITE COMPANY

Distributor Name

West Landis Avenue

Street Address

Vineland, New Jersey

City and State

2 (a)i Date of Contract August 15, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

County of—Atlantic

Townships of—Buena Vista

Hammonton

County of—Cumberland

County of—Cloucester

Townships of—Newfield

Franklin

County of—Salem

Townships of—Elmer

Pittsgrove

[fol. 1019]

1. REO SALES & SERVICE

Distributor Name

Chestnut Avenue and Delsea Drive

Street Address

Vineland, New Jersey

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

County of—Cumberland

[fol. 1022]

Dick Barclay

1.

d.b.a.

DICK BARCLAY AUTO AND TIRE SERVICE

Dealer Name

814 S. Main Street

Street Address

West Atlantic City, New Jersey

City and State

Contracted By

GARDEN STATE WHITE COMPANY

Distributor Name

Merchantville 11, New Jersey

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Jersey:

County of—Atlantic, except

Townships of—Buena Vista

Hammonton

Weymouth

Boro of Folson

[fol. 1026]

1. INLAND WHITE TRUCK COMPANY

Distributor Name

Broadway & Lomas Blvd., N.E.

Street Address

Albuquerque, New Mexico

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Mexico:

Counties of—

Bernalillo	Lea	San Miguel
Catron	Lincoln	Sandoval
Chaves	Los Alamos	Santa Fe
Colfax	McKinley	Sierra
Curry	Mora	Socorro
DeBaca	Quay	Taos
Guadalupe	Rio Arriba	Torrance
Eddy	Roosevelt	Union
Harding	San Juan	Valencia

On March 5, 1956 Selling Territory changed to:

State of New Mexico:

Counties of—

Bernalillo	McKinley	Santa Fe
Catron	Mora	Sierra
Colfax	Quay	Socorro
Guadalupe	Rio Arriba	Taos
Harding	San Juan	Torrance
Lincoln	San Miguel	Union
Los Alamos	Sandoval	Valencia

[fol. 1032]

1.

H. T. PAGE

Key Dealer Name

302 South Canyon Street

Street Address

Carlsbad, New Mexico

City and State

Contracted By

EL PASO WHITE TRUCK CO.

Distributor Name

El Paso, Texas

City and State

2 (a)i Date of Contract June 6, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Mexico:

County of—Eddy

[fol. 1033]

1. **HOBBS WHITE TRUCK COMPANY, INC.**

Distributor Name

.....
Street Address**Hobbs, New Mexico**

City and State

2 (a)i Date of Contract November 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New Mexico:

Counties of—Chaves

Curry

DeBaca

Lea

Roosevelt

[fol. 1034]

1.

KEITH GAS COMPANY, INC.

Distributor Name

Box 1177

Street Address

Lovington, New Mexico

City and State

2 (a)i Date of Contract or Assumption Thereof
June 11, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

[fol. 1040]

1. TAYLOR WHITE TRUCKS, INC.

Distributor Name

465 State Street

Street Address

Binghamton, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Broome

Tioga—except

Townships of—Barton

Spencer

Tompkins

On March 15, 1956 Selling Territory changed to:

State of New York:

Counties of—Broome

Chenango

Delaware

Tioga—except

Townships of—Barton

Spencer

Tompkins

[fol. 1042]

1.

**BRONX-WESTCHESTER
WHITE TRUCKS INC.**

Distributor Name

653 Bruckner Blvd.

Street Address

Bronx, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Bronx

Westchester

On August 1, 1957 Selling Territory changed to:

State of New York:

Counties of—Bronx and Westchester except—
Account of Neptune Storage
Company and its subsidiaries.

On January 1, 1958 Selling Territory changed to:

State of New York:

County of Westchester and that portion of the
Borough of Bronx lying North
and West of the New England
Expressway and the Bronx Ex-
pressway; including the—

Pine Hill Crystal Water Co.

Santini Bros.

(The Seven Brothers)

Exner Sand and Gravel
except the Neptune Storage Com-
pany and its subsidiaries.

[fol. 1043]

1.

CERNIGLIA MOTORS, INC.

Distributor Name

1147-55 Liggett Avenue

Street Address

Bronx, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Westchester

Putnam

and part of Borough of Manhat-
tan North of 125th Street and all
of Borough of Bronx.

[fol. 1044]

1. **BROOKLYN WHITE TRUCKS, INC.**

Distributor Name

Third Avenue and Union Street

Street Address

Brooklyn, New York

City and State

2 (a)i Date of Contract February 1, 1955

2 (a)if Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Kings (Brooklyn, N. Y.)

On July 1, 1958 Selling Territory changed to:

State of New York:

County of—Kings (Brooklyn, N. Y.) except:
the account of:

Zone Oil Trucking Corp.

26 Bridgewater Street

Brooklyn, N. Y.

[fol. 1045]

1. REO BUS AND TRUCK CORPORATION

Distributor Name

224 Empire Boulevard

Street Address

Brooklyn, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 28, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Borough of—Brooklyn

County of—Kings in the City of New York

[fol. 1048]

1.

DEYO'S SERVICE

Distributor Name

.....
Street Address

Chazy, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 28, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Clinton

[fol. 1055]

1. **ELMIRA WHITE TRUCK CORP.**

Distributor Name

P. O. Box 304

Street Address

Elmira, New York

City and State

2 (a)i Date of Contract **October 21, 1957**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Allegany (Except

Townships of—Bolivar

Clarksville

Genesee

Wirt)

Chemung

Schuyler

Steuben

Tioga (Barton and Spencer

Townships only).

State of Pennsylvania:

Counties of—Bradford

Tioga

[fol. 1056]

1.

HEISS BROTHERS

Distributor Name

Hempstead Turnpike & Biltmore Ave.

Street Address

Elmont, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 14, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Elmont, Long Island and vicinity

[fol. 1060]

1.

SMITH EQUIPMENT COMPANY

Direct Key Dealer Name

238 Bay Street

Street Address

Glens Falls, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Washington

Warren

[fol. 1064]

1.

D. A. MOTORS

Key Dealer Name

Route 9W

Street Address

Haverstraw, New York

City and State

Contracted By

NORTH JERSEY WHITE AUTOCAR INC.

Distributor Name

Paterson, New Jersey

City and State

2 (a)i Date of Contract January 1, 1956

2 (a)ii Termination Date of Contract

2 (b)- Selling Territory Assigned:

State of New York:

County of—Rockland with the exception of Suffern Bottling Works and all bus companies,

[fol. 1072]

1.

**ANDERSON-BALL TRUCK
EQUIPMENT CO., INC.**

Distributor Name

622 East 2nd Street

Street Address

Jamestown, New York

City and State

2 (a)i Date of Contract January 2, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

*County of—Chautauqua—with the exception of
City Ripley, Townships of Boli-
var, Clarksville, Genesee, and
Wirt in Allegany County. Town-
ships of Allegany, Carrollton,
Cold Spring, Elk, Olean, Port-
ville, Randolph, Red House, Sala-
manca, and South Valley in Cat-
taugus County.

[fol. 1078]

1.

RAFTERY'S GARAGE

Direct Key Dealer Name

183 Foxhall Avenue

Street Address

Kingston, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of Ulster, with the exception of the
following accounts:

Needes' Express Inc.,

Clifford Jackson,

* Channel Master Corp.

Austin R. Newcombe

& Co. Inc.

Forst Packing Co.

On April 1, 1958 Selling Territory changed to:

State of New York:

County of Ulster, with the exception of the
following accounts:

Needes' Express, Inc.

C. & E. Trucking Corp.

[fol. 1082]

1. **LONG ISLAND WHITE TRUCK, INC.**

Distributor Name

30-01 Borden Ave.

Street Address

Long Island City, New York

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—**Queens**

[fol. 1086]

1.

JOHN STURTZ

Dealer Name

Shady Avenue

Street Address

Lowville, New York

City and State

Contracted By

PURCELL WHITE TRUCKS, INC.

Distributor Name

Syracuse, New York

City and State

2 (a)i Date of Contract **February 15, 1956**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—**Lewis**

[fol. 1094]

1.

DABRUSIN MOTORS

Distributor Name

18-34 Lake St.

Street Address

Newburgh, New York

City and State

2 (a)i Date of Contract January 24, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Orange

Sullivan

[fol. 1096]

1.

MASON WHITE TRUCKS, INC.

Distributor Name

25 Denton Ave.

Street Address

New Hyde Park, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Nassau

[fol. 1098]

1.

ALONGI MOTOR COMPANY

Distributor Name

4611-13 Pine Avenue

Street Address

Niagara Falls, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Niagara

[fol. 1100]

Joachim Schmitz

1.

d.b.a:

SCHMITZ SALES & SERVICE

Distributor Name

Shirley Road

Street Address

North Collins, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

North Collins and vicinity

[fol. 1102]

1. **PAVILION TRUCK SALES CORP.**

Key Dealer Name

.....
Street Address

Pavilion, New York

City and State

Contracted By

PARKER WHITE TRUCKS, INC.

Distributor Name

Rochester, New York

City and State

2 (a)i Date of Contract November 15, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

County of—Genesee

Townships of—Bergen

Byron

Bethany

LeRoy

Pavilion

Stafford

[fol. 1105]

1.

MARTIN TONES

Metropolitan Dealer Name

108 Lake Street

Street Address

Penn Yan, New York

City and State

Contracted By

PARKER WHITE TRUCKS INC.

Distributor Name

Rochester, New York

City and State

2 (a)i Date of Contract October 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Yates

Ontario—Town of Naples only

[fol. 1106]

1.

F. P. McKEEFE AND COMPANY

Direct Key Dealer Name

13 Broad Street

Street Address

Plattsburgh, New York

City and State

2 (a)i Date of Contract December 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Keeseville and vicinity

Essex, Clinton and Franklin counties

[fol. 1108]

1. **WHITE TRUCK & EQUIPMENT COMPANY**

Direct Key Dealer Name

40 North White Street

Street Address

Poughkeepsie, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

The following municipalities located in Dutchess
County, N. Y.—Arlington

Dyde Park

City of Poughkeepsie

Town of Poughkeepsie

Red Hook

Rhinebeck

[fol. 1109]

1.

WRIGHT BROTHERS, INC.

Distributor Name

41 Dutchess Turnpike

Street Address

Poughkeepsie, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 22, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Columbus

Dutchess

Sales and Service on a non-exclu-
sive basis in the counties of—

Ulster

Orange

[fol. 1114]

1. **PARKER WHITE TRUCKS, INC.**

Distributor Name

62-74 Humboldt Street

Street Address

Rochester, New York

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Livingston

Monroe

Ontario

Seneca

Wayne

Yates

Orleans—

Townships of—Keandall

Murray

Clarendon

Genesee—

Townships of—Byron

Stafford

Bergen

LeRoy

Pavilion

Bethany

Wyoming—

Townships of—Middlebury

Covington

Perry

Warsaw

Gainsville

Castile

Pike

Genesee Falls

[fol. 1115]

1.

TRUCK SALES, INC.

Distributor Name

278 Dewey Avenue

Street Address

Rochester, New York

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Monroe

Wayne

Ontario

Yates

Livingston

Orleans

[fol. 1121]

1.

MID-STATE MOTORS

Key Dealer Name

South Main Street

Street Address

Sherburne, New York

City and State

Contracted By

TAYLOR WHITE TRUCKS, INC.

Distributor Name

Binghamton, New York

City and State

2 (a)i Date of Contract March 15, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Chenango

Delaware

[fol. 1127]

J.

PURCELL WHITE TRUCKS, INC.

Distributor Name

1226 West Genesee Street

Street Address

Syracuse, New York

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Cayuga

Chenango

Cortland

Delaware

Madison

Onondaga

Oswego

On March 15, 1956 Selling Territory changed to:

State of New York:

Counties of—Cayuga

Cortland

Jefferson

Lewis

Madison

Onondaga

Oswego

St. Lawrence

[fol. 1128]

1,

SYRACUSE TRUCK SALES

Distributor Name

1120 Erie Boulevard East

Street Address

Syracuse, New York

City and State

2 (a)i Date of Contract or Assumption Thereof .
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 2, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Onondaga

Cayuga

Seneca

Oswego

Oneida

Cortland

Jefferson

St. Lawrence

Lewis

Herkimer

Otsego

Madison

[fol. 1132]

Frank Potts

1. d.b.a.

JOHNSON WHITE TRUCKS

Distributor Name

416 Broad Street

Street Address

Utica, New York

City and State

2 (a)i Date of Contract August 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of New York:

Counties of—Oneida

Herkimer

Otsego

Montgomery County—

Townships of—Minden

St. Johnsville

Palatine

Canajoharie

Root

Schoharie County—

Townships of—Sharon

(Which includes Sharon Springs Central School)

Fulton County—

Townships of—Oppenheim

Ephratah

Stratford

[fol. 1144]

1. ASHEVILLE WHITE SALES, INC.

Distributor Name

Sweeten Creek Road

Street Address

Asheville, North Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Buncombe	Jackson
Haywood	Swain
Madison	Graham
Cherokee	McDowell
Henderson	Transylvania
Polk	Macon
Clay	Yancey

[fol. 1146]

1. CURTISS MOTOR COMPANY

Distributor Name

46 Banks Avenue

Street Address

Asheville, North Carolina

City and State

2 (a)i Date of Contract or Assumption Thereof
August 11, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Buncombe
Yancy
Henderson
Transylvania
Haywood
Madison

[fol. 1151]

David R. Ray

1.

d.b.a.

PARK PLACE GARAGE

Distributor Name

106 Broadfoot Avenue

Street Address

Fayetteville, North Carolina

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 27, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Cumberland : Robeson

Hoke Moore

Scotland Lee

Richmond Harnett

[fol. 1153]

1. **BARRINGER BROS. AND GAITHER, INC.**

Distributor Name

Highland Avenue at Ridge Street

Street Address

Hickory, North Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Avery Catawba

Alexander Mitchell

Burke Watauga

Caldwell Iredell

[fol. 1156]

1. **W. S. BOYD SALES COMPANY, INC.**

Distributor Name

Louisburg Road

Street Address

Raleigh, North Carolina

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—

Alamance	Johnson	Jones
Chatham	Lee	Beauford
Durham	Nash	Halifax
Edgecombe	Orange	Martin
Franklin	Vance	Wayne
Granville	Wake	Bertie
Green	Pamlico	Hertford
Lenoir	Washington	Northampton
Dare	Pitt	Tyrrell
Hyde	Warren	
Harnett	Wilson	

[fol. 1158]

1. **TRUCK-TRACTOR SALES COMPANY, INC.**

Distributor Name

17th and Mears Street

Street Address

Wilmington, North Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Bladen

Brunswick

Columbus

Carteret

Cumberland

Craven

Duplin

New Hanover

Onslow

Pender

Sampson

[fol. 1160]

1.

GWYN MOTOR SALES

Distributor Name

Cherry Street at Polo Road

Street Address

Winston-Salem, North Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Alleghany

Ashe

Forsyth

Guilford

Rockingham

Stokes

Surry

Wilkes

Yadkin

[fol. 1161]

C. William Witherow

1.

T/A

REO TRUCK & BUS CO.

Distributor Name

1323 N. Liberty Street

Street Address

Winston-Salem, North Carolina

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of North Carolina:

Counties of—Alleghany

Wilkes

Surry

Yadkin

Stokes

Rockingham

Guilford

Forsyth

Davidson

Randolph

Davis

Iredell

[fol. 1165]

1.

B. H. CHESLEY CO.

Key Dealer Name

220 N. P. Avenue

Street Address

Fargo, North Dakota

City and State

Contracted By

WILCOX & CHESLEY INC.

Distributor Name

Mankato, Minnesota

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

All of the State of North Dakota

State of Minnesota:

Counties of—

Big Stone	Wadena	Mahomen
Stevens	Pope	Clear Water
Traverse	Kittson	Polk
Grant	Norman	Red Lake
Douglas	Wilken	Pennington
Todd	Clay	Marshall
Ottertail	Becker	Roseau

[fol. 1166]

1.

NORTHERN EQUIPMENT & SUPPLY COMPANY

Distributor Name

509 S. 3rd Street

Street Address

Grand Forks, North Dakota

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of North Dakota:

Counties of—Towner

Cavalier

Pembina

Benson

Ramsey

Walsh

Eddy

Nelson

Grand Forks

Foster

Griggs

Steels

Traill

State of Minnesota:

Counties of—Kittson

Roseau

Lake of the Woods

Marshall

Polk

Pennington

Red Lake

[fol. 1170]

1. **BERG MOTOR COMPANY, INC.**

Distributor Name

418 S. Arlington Street

Street Address

Akron, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 19572 (a)ii Termination Date of Contract
Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:
State of Ohio:Counties of—**Summit**
Portage

[fol. 1173]

Lowell Wyse1. **d.b.a.****WYSE TRUCK SERVICE**

Key Dealer Name

.....
Street Address**Archibald, Ohio**

City and State

Contracted By**C. L. HASKINS, INC.**

Distributor Name

Toledo, Ohio

City and State

2 (a)i Date of Contract **November 1, 1956**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—**Fulton**

[fol. 1178]

1. **YOUNG WHITE TRUCKS, INCORPORATED**

Distributor Name

1307 Third Street, S.W.

Street Address

Canton, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Stark

Carroll

Holmes

Tuscarawas

Wayne

Columbiana—

Territory north of a line
drawn East and West from
Homeworth to Millrock
(Townships of Butler, Fair-
field, Knox, Perry, Salem
and Unity.

[fol. 1179]

1.

BOGGS REO SALES, INC.

Distributor Name

417-9 5th Street, S.E., P. O. Box 48

Street Address

Canton, Ohio

City and State

2 (a) i Date of Contract or Assumption Thereof
June 5, 1957

2 (a) ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Carroll
Holmes
Stark
Tuscarawas
Wayne

[fol. 1185]

1. **PERRY FAY MOTORS, INCORPORATED**

Distributor Name

1165 Dublin Road

Street Address

Columbus, Ohio

City and State

2 (a) i Date of Contract . January 1, 1955

2 (a) ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—

Franklin	Knox	Morrow
Delaware	Licking	Pickaway
Fairfield	Logan	Ross
Fayette	Madison	Union
Hocking	Marion	Vinton

[fol. 1186]

1.

**LIGGETT'S COLUMBUS REO
COMPANY, INC.**

Distributor Name

427 E. Main Street

Street Address

Columbus, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—

Marion
Morrow
Union
Delaware
Licking
Franklin
Madison
Pickaway
AthensFairfield
Muskingum
Guernsey
Fayette
Ross
Hocking
Perry
Vinton
MeigsGollia
Jackson
Pike
Scioto
Lawrence
Washington
Morgan
Noble
Monroe

[fol. 1190]

1.

**THE HUGHES WHITE TRUCK
SALES COMPANY**

Distributor Name

West Second and Sunrise Boulevard

Street Address

Dayton, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—

Montgomery	Darke	Preble
Champaign	Greene	Shelby
Clark	Miami	Warren
Clinton		
Butler—Townships of Lemon and Madison		

[fol. 1192]

1. THE HUGHES WHITE TRUCK SALES CO.

Distributor Name

West 2nd and Sunrise Boulevard

Street Address

Dayton, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof

February 24, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Montgomery

Greene

Champaign

Miami

Clark

Preble

Clinton

Shelby

Darke

Warren

and in Butler, the townships of

Lemon and Madison

[fol. 1195]

1. WIMMER MOTOR SALES

Distributor Name

660 Walnut Street

Street Address

East Liverpool, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 5, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Columbrana in West Virginia that
portion of Hancock County,
North of New Cumberland

[fol. 1196]

1. LORAIN COUNTY TRUCK &
EQUIPMENT CO.

Distributor Name

133 Elbe Street

Street Address

Elyria, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 10, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Lorain

[fol. 1197]

1. **C. O. DUFFIELD MOTOR COMPANY**

Distributor Name

208 W. Crawford Street

Street Address

Findlay, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Hancock
Wyandot

[fol. 1201]

1.

FREMONT WHITE TRUCK SALES & SERVICE

Distributor Name

125 East State Street

Street Address

Fremont, Ohio

City and State

2 (a)i Date of Contract July 2, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Sandusky, exclusive of Wood-
ville Township

Erie

The account of Paul Gilmore, Inc.
only in Seneca County.

On April 15, 1957 Selling Territory changed to:

State of Ohio:

Counties of—Erie

Hancock

Ottawa

Seneca

(Account of Paul Gilmore,
Inc. only)

Sandusky

(Excluding sale of White
Trucks in Woodville town-
ship)

[fol. 1203]

L. Paul Haskins

1.

d.b.a**HASKINS GARAGE**

Key Dealer Name

2nd and Grape Avenue

Street Address

Gallipolis, Ohio

City and State

Contracted By**MUELLER WHITE TRUCK COMPANY, INC.**

Distributor Name

Huntington, West Virginia

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—~~Gallia~~

State of West Virginia:

County of—~~Mason~~

[fol. 1205]

Roy J. Sink

1. d.b.a.

STANDARD GARAGE & PARTS

Key Dealer Name

323 Martin Street

Street Address

Greenville, Ohio

City and State

Contracted By

THE HUGHES WHITE TRUCK SALES COMPANY

Distributor Name

Dayton, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Darke

[fol. 1215]

1.

Glenn M. Anderson

d.b.a.

ANDERSON'S REPAIR

Key Dealer Name

30 North Willis Ave.

Street Address

Mansfield, Ohio

City and State

Contracted By

MIDWAY GARAGE & SERVICE, INC.

Distributor Name

Monroeville, Ohio

City and State

2 (a)i Date of Contract July 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Richland

[fol. 1218]

1.

B & W GARAGE

Dealer Name

.....
Street Address

Marion, Ohio

City and State

Contracted By

PERRY FAY MOTORS, INC.

Distributor Name

Columbus, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Marion

Morrow

Knox

[fol. 1222]

1.

Francis M. Osborne III

d.b.a.

MENTOR MOTOR SALES

Distributor Name

1634 Mentor Avenue

Street Address

Mentor, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Lake

Geauga

Ashtabula

[fol. 1224]

Charles E. Dumford

1.

d.b.a.

MIDDLETOWN WHITE TRUCK COMPANY

Key Dealer Name

1700 Plum Avenue

Street Address

Middletown, Ohio

City and State

Contracted By

THE HUGHES WHITE TRUCK SALES COMPANY

Distributor Name

Dayton, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Butler

Townships of—Madison and

Lemon—only

[fol. 1227]

1. **MIDWAY GARAGE & SERVICE, INC.**

Distributor Name

220 Sandusky Street

Street Address

Monroeville, Ohio

City and State

2 (a)i Date of Contract July 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Huron

Ashland

Crawford

Richland

Seneca—

(With the exception of Mo-
hawk Motor, Inc., and Paul
Gilmore, Inc.)

Wayandot

300

[fol. 1230]

1.

WHITE'S MOTOR SERVICE

Metropolitan Dealer Name

Fourth & Locust

Street Address

Newark, Ohio

City and State

Contracted By

PERRY FAY MOTORS, INC.

Distributor Name

1165 Dublin Road, Columbus 8, Ohio

City and State

2 (a)i Date of Contract . . . December 15, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Licking, except the accounts of:

Byerlyte, Inc., and

B. & L. Motor Freight

[fol. 1239]

F. Carl Fletcher

1.

d.b.a.

RICHLAND MOTOR COMPANY

Key Dealer Name

190 West Main Street

Street Address

St. Clairsville, Ohio

City and State

Contracted By

WHEELING WHITE TRUCK COMPANY

Distributor Name

Wheeling, West Virginia

City and State

2 (a)i Date of Contract March 15, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

All of Belmont County excepting the
townships of—Colerain

Pease

Pultney

Mead

[fol. 1242]

1. MAIN TRUCK & TRAILER SERVICE, INC.

Key Dealer Name

2705 East Main Street

Street Address

Springfield, Ohio

City and State

Contracted By

THE HUGHES WHITE TRUCK SALES COMPANY

Distributor Name

Dayton, Ohio

City and State

2 (a)i Date of Contract April 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Clark

[fol. 1244]

1. STEUBENVILLE WHITE TRUCK COMPANY

Distributor Name

Stoney Hollow Boulevard (P. O. Box 1189)

Street Address

Steubenville, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Jefferson

State of West Virginia:

County of—Brooke

City of Weirton—County of Hancock

On February 15, 1956 Selling Territory changed to:

State of Ohio:

Counties of—Jefferson

Columbiana—the southern part,
between Mill Rock
and Homeworth, but
including these
towns.

State of West Virginia:

County of Brooke

Hancock

304

[fol. 1250]

Russell S. Dryfuse

1.

d.b.a.

MADISON MOTOR SERVICE

Key Dealer Name

R. F. D. #2

Street Address

Tiffin, Ohio

City and State

Contracted By

MIDWAY GARAGE & SERVICE INC.

Distributor Name

Monroeville, Ohio

City and State

2 (a)i Date of Contract July 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Seneca

Wayandot

(With the exception of the
accounts of Mohawk Motor,
Inc. and Paul Gilmore, Inc.)

[fol. 1255]

1.

McMILLEN MOTOR SALES

Distributor Name

304 Southard Avenue

Street Address

Toledo, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Fulton

Henry

Lucas

Wood

Ottawa

Sandusky

Erie

Huron

Seneca

State of Michigan:

County of—Lenawee

[fol. 1256]

1. C. L. HASKIN, INCORPORATED

Distributor Name

701 N. Westwood Avenue

Street Address

Toledo, Ohio

City and State

2 (a)i Date of Contract January 2, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Defiance

Fulton

Henry

Lucas

Williams

Wood

Sandusky—

Township of—Woodville only

State of Michigan:

Counties of—Lenawee

Monroe

[fol. 1265]

1. OHIO WHITE TRUCK SERVICE

Key Dealer Name

Madison & Bever Streets

Street Address

Wooster, Ohio

City and State

Contracted By

YOUNG WHITE TRUCKS, INC.

Distributor Name

Canton, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

County of—Wayne

[fol. 1268]

1. THE FYDA WHITE TRUCK COMPANY

Distributor Name

812 Poland Avenue

Street Address

Youngstown, Ohio

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Mahoning

Trumbull

[fol. 1269]

1.

REO YOUNGSTOWN

Distributor Name

530 Glenwood Avenue

Street Address

Youngstown, Ohio

City and State

2 (a)i Date of Contract or Assumption Thereof
January 8, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Mahoning and

Trumbull

[fol. 1272]

1. **HARTMAN AUTO & TRUCK SERVICE**

Distributor Name

1730 Maysville Avenue

Street Address

Zanesville, Ohio

City and State

2 (a)i Date of Contract January 15, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Ohio:

Counties of—Coshocton

Morgan

Muskingum

Noble

Perry

On February 4, 1958 Selling Territory changed to:

State of Ohio:

Counties of—Coshochton

Muskingham

Perry

Morgan

[fol. 1280]

1.

REO SALES, INC.

Distributor Name

418 "C" Southwest

Street Address

Miami, Oklahoma

City and State

2 (a) i Date of Contract or Assumption Thereof
June 5, 1958 *

2 (a) ii Termination Date of Contract

Contract Replaced by New Contract on
January 28, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Oklahoma:

County of—Ottawa

State of Kansas:

County of—Cherokee

State of Missouri:

Counties of—Jasper

Newton

McDonald

[fol. 1287]

1. TULSA WHITE TRUCK COMPANY

Distributor Name

420 West-First Street

Street Address

Tulsa, Oklahoma

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Oklahoma:

Counties of—

Adair	LeFlore	Pawnee
Atoka	Mayes	Pittsburg
Cherokee	McIntosh	Pushmataha
Coal	Muskogee	Rogers
Creek	Nowata	Sequoyah
Haskell	Okfuskee	Tulsa
Hughes	Okmulgee	Wagoner
Latimer	Osage	Washington

On September 1, 1957. Selling Territory changed to:

State of Oklahoma:

Counties of—

Adair	LeFlore	Pawnee
Atoka	Mayes	Pittsburg
Cherokee	McIntosh	Pushmataha
Coal	Muskogee	Rogers
Craig	Nowata	Sequoyah
Creek	Okfuskee	Tulsa
Haskell	Okmulgee	Wagoner
Hughes	Osage	Washington
Latimer		

[fol. 1293]

1.

OREGON TRUCK SALES INC.

Distributor Name

P. O. Box 314

Street Address

Albany, Oregon

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Oregon:

Counties of—

Baker	Jefferson	Sherman
Benton	Lincoln	Umatilla
Crook	Linn	Union
Deschutes	Marion	Wasco
Gilliam	Morrow	Wallowa
Grant	Polk	

Wheeler—southern part of Clackamas and
Yamhill counties

[fol. 1295]

1. HARBOR DIESEL & SUPPLY COMPANY

Key Dealer Name

Bayshore Drive—P. O. Box 547

Street Address

Coos Bay, Oregon

City and State

Contracted By

GUNDERSON BROS. ENGINEERING CORP.

Distributor Name

Eugene, Oregon

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Oregon:

County of—Coos exclusively and

County of Curry non-exclusive

[fol. 1297]

1. GUNDERSON BROS. ENGINEERING CORP.

Distributor Name

2200 West 6th Street

U. S. Highway 99, North P. O. Box 389

Street Address

Eugene, Oregon

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Oregon:

Counties of—Coos County, Curry, Douglas and

Lane. (See supplement to

Distributor Selling Agree-

ment regarding Curry

County, which is to be re-

leased by this firm if they

have not given the White

Motor Company a fair and

satisfactory penetration of

the market in this County by

9-10-55. This supplement is

dated the Tenth day of Sep-

tember, 1954)

314

[fol. 1298]

1.

**GUNDERSON BROTHERS
ENGINEERING CORPORATION**

Distributor Name

2200 West Sixth Avenue
Pacific Hwy. North, P. O. Box 3159
Street Address

Eugene, Oregon
City and State

2 (a)i Date of Contract or Assumption Thereof
April 29, 1958

2 (a)ii Termination Date of Contract
Contract Replaced by New Contract on
Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Oregon:

Counties of—Coos

Curry

Douglas

Lane

[fol. 1304]

1.

HAUPERT TRACTOR COMPANY

Distributor Name

#3610 North Pacific Highway

Mailing address: Post Office Box 992

Street Address

Medford, Oregon

City and State

2 (a)i Date of Contract May/26, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Oregon:

Counties of—Jackson

Josephine

Klamath

Lake

[fol. 1310]

1. **BETH-ALLEN SALES COMPANY**

Distributor Name

718-38 N. Quincey Street

Street Address

Allentown, Pa.

City and State

2 (a)i Date of Contract July 14, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Bucks

Townships of—

Milford

Springfield

Durham

Nockamixon

Bridgeton

Richland

Haycock

Tinicum

Bedminster

West Rockhill

East Rockhill

Hilltown

Carbon—except Banks and Lau-
sanne Townships

Pike

Lehigh

Monroe

Northampton

[fol. 1313]

Clyde S. Peterman and Sheldon Peterman

1. d.b.a.

PETERMAN'S GARAGE

Distributor Name

805 Chestnut Street

Street Address

Altoona, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Blair

Huntingdon

Center

Bedford

and all of the County of Clearfield

Forest—

townships of—Howe, Jenks

and Barnett

Jefferson

Elk

Cameron

318

[fol. 1315]

1.

PETERMAN'S GARAGE

Distributor Name

805 Chestnut Street

Street Address

Altoona, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—~~Blair~~

Clearfield (except City of Clear-
field and vicinity).

Bedford

Elk

Cameron

[fol. 1322]

E. G. Studebaker

1.

d.b.a.**CONTINENTAL SALES COMPANY**

Key Dealer Name

Street Address**Bedford, Pennsylvania**

City and State

Contracted By**Clyde S. Peterman and Sheldon E. Peterman****d.b.a.****PETERMAN'S GARAGE**

Distributor Name

Altoona, Pennsylvania

City and State

2 (a)i Date of Contract **April 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:**All of Bedford County—except townships of
Union, Kimmell, Bloomfield, Woodbury.**

[fol. 1324]

1.

CRAGO'S GARAGE

Dealer Name

167 Morewood Avenue

Street Address

Blairsville, Pennsylvania

City and State

Contracted By

THE RINGGOLD CORPORATION

Distributor Name

Kittanning, Pennsylvania

City and State

2 (a)ii Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Indiana and the

Townships of—Conemaugh

Blacklick

Burrell

West Wheatfield

East Wheatfield

Brush Valley

Bullington

Center

Young

Pine

[fol. 1328]

1.

EAST END MOTORS

Key Dealer Name

South Avenue Extension

Street Address

Bradford, Pennsylvania

City and State

Contracted By

Carl Mayr

d.b.a.

POPLAR WHITE TRUCK & EQUIPMENT CO.

Distributor Name

Erie, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of McKean (City of Bradford only)

[fol. 1331]

1.

A. R. BOARTS

Distributor Name

Box 1101

Street Address

Butler, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Butler

[fol. 1333]

1.

L. B. SMITH, INC.

Distributor Name

.....
Street AddressCamp Hill, Pennsylvania
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Perry

Dauphin

Lebanon

Cumberland, except

Townships of— Lower Mifflin,
Upper Mifflin,
North Newton,
South Newton,
Hopewell,
Shippensburg,
and
Southampton
in Cumberland
County.

[fol. 1335]

1.

C. EARL BROWN

Distributor Name

South Main St. Extended, P.O. Box 224

Street Address

Chambersburg, Pennsylvania

City and State

2 (a) i Date of Contract January 1, 1955

2 (a) ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Fulton

Franklin

Adams—

Townships of—Menallen

Franklin

Butler

Straban

Hamiltonban

Cumberland—

Townships of—Hopewell

Upper Mifflin

Lower Mifflin

North Newton

South Newton

Southampton

Shippensburg

Highland

Cumberland

Liberty

Freedom

Mountjoy

[fol. 1336]

1.

RIFE MOTOR COMPANY

Distributor Name

North Franklin Street

Street Address

Chambersburg, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 24, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Franklin

Fulton

[fol. 1337]

1. WILMINGTON & CHESTER MOTOR
SALES, INC.

Distributor Name

5th and Barclay Streets
Street Address

Chester, Pennsylvania
City and State

2 (a)i Date of Contract August 15, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Chester

Townships of—Nottingham

Marlboro

Newlin

Birmingham

County of—Delaware

Townships of—

Upper Chichester

Middletown

Concord

Eddystone

Ridley

Springfield

Upper Providence

Lower Chichester

Aston

Edgemont

Birmingham

Bethel

Chester

Thornberry

[fol. 1338]

1.

SMEAL BROTHERS

Distributor Name

.....
Street AddressClearfield, Pennsylvania
City and State2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 21, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania;
City of Clearfield and vicinity

[fol. 1341]

1.

B. F. LEAMAN & SONS, INC.

Direct Key Dealer Name

520 E. Lancaster Avenue
Street AddressDowningtown, Pa
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:
The account of B. F. Leaman & Sons, Inc.
Downingtown, Penna

[fol. 1346]

1. **PETERMAN'S GARAGE—DUBOIS BRANCH**

Distributor Name

Falls Creek Road, Route 219

Street Address

DuBois, Pennsylvania

City and State

2 (a)i Date of Contract September 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Jefferson, Elk and Cameron—
 Townships of Howe, Jenks and Barnett in the
 County of Forest—County of Clearfield except
 the Townships of Beccario, Gulich, Girard,
 Boggs, Decatur, Cooper, Karthaus, Graham,
 Covington, Morris, Bradford, Goshen, Knox,
 Lawrence, Bibler and Woodward

[fol. 1348]

Testa Bros.

1.

T/A

REO SALES AND SERVICE

Distributor Name

1049 Bushkill Drive

Street Address

Easton, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
 January 8, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of Northampton

[fol. 1349]

1.

B. E. WEBER'S GARAGE

Distributor Name

387 N. Courtland Street

Street Address

East Stroudsburg, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
June 11, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of Monroe

[fol. 1351]

1.

ROY S. CARLSON

Dealer Name

R. D. 3

Street Address

Edinboro, Pennsylvania

City and State

Contracted By

POPLAR WHITE TRUCK & EQUIPMENT CO.

Distributor Name

Erie, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Edinboro and vicinity in Erie County

[fol. 1353]

Carl Mayr

1.

d.b.a.

POPLAR WHITE TRUCK & EQUIPMENT CO.

Distributor Name

444 West 12th Street

Street Address

Erie, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Crawford

Erie

Warren—Account of Hammond
Iron Works, only

State of New York:

County of—Chautauqua

City of Ripley only

On June 1, 1955 Selling Territory changed to:

State of Pennsylvania:

Counties of—Crawford

Erie

McKean

Potter

Warren—(Excluding Wm. F.
Grossett Company, Inc.
of Warren)

State of New York:

Counties of—Chautauqua—City of Ripley only

On April 15, 1957 Selling Territory changed to:

State of Pennsylvania:

Counties of—Crawford

Erie

Forest

(Townships of—Harmony

Hickory

Kingsley

Green

Tionesta only)

McKean

Potter

Venango

Warren (Excluding W. F. Grossett Co. Inc. Warren, Pa.)

State of New York:

County of Chautauqua (City of Ripley only)

[fol. 1355]

1. VALLEY WHITE TRUCK COMPANY

Distributor Name

57-61 Elizabeth Street

Street Address

Forty-Fort, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Luzerne

Wyoming

Columbia

Carbon—

Townships of—Banks

Lausanne

Schuylkill—

Townships of—North Union Delano

East Union Rahn

W. Mahanoy Mahanoy

Kline Butler

Rush Ryan

Union Schuylkill

[fol. 1356]

1. GREENSBURG WHITE TRUCK SALES, INC.

Distributor Name

R. D. #6, Lincoln Highway West

Street Address

Greensburg, Pennsylvania

City and State

2 (a)i Date of Contract November 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Westmoreland—excluding

Rostraver township

[fol. 1361]

1.

RINGLER MOTORS, INC.

Distributor Name

397 Ferndale Avenue

Street Address

Johnstown, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Cambria

Somerset

[fol. 1362]

1.

FRIENDLY CITY MOTORS, INC.

Distributor Name

620 Railroad Street

Street Address

Johnstown, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 21, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Cambria

[fol. 1367]

1. **THE RINGGOLD CORPORATION**

Distributor Name

Keystone Building

Street Address

Kittanning, Pennsylvania

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Armstrong

Indiana

In County of Clairon—

Townships of—Perry	Piney
Toby	Monroe
Madison	Redbank
Porter	Limestone
Licking	

On April 15, 1957 Selling Territory changed to:

State of Pennsylvania:

Counties of—Armstrong

Indiana

Clairon—

Townships of—

Perry	Redbank	Knox
Toby	Limestone	Salem
Madison	Mill Creek	Beaver
Porter	Washington	Paint
Licking	Farmington	Highland
Piney	Ashland	Clairon
Monroe	Elk	

[fol. 1373]

1.

WHITE-INDIANA SERVICE, INC.

Distributor Name

1116 Marshall Avenue, P. O. Box 1046

Street Address

Lancaster, Penna.

City and State

2 (a)i Date of Contract April 22, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Lancaster

[fol. 1374]

1.

WILLIAM G. SCHLEICHER

Distributor Name

Rt. 895

Street Address

Lehighton, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
March 14, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Lehighton and vicinity in Carbon County

[fol. 10]

J. HARVEY SPAHR

Distributor Name

41-3 N. Main Street

Street Address

Manheim, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of Lancaster and Lebanon

[fol. 1380]

Franklin M. Miller

d.b.a.

1.

MEADVILLE MOTOR TRUCK CO.

Key Dealer Name

90 Race Street

Street Address

Meadville, Pennsylvania

City and State

Contracted By

POPLAR WHITE TRUCK, INC.

Distributor Name

Erie, Pennsylvania

City and State

2 (a)i Date of Contract August 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Crawford

[fol. 1386]

1.

STEW'S AUTO SERVICE

Dealer Name

105 Hamilton Street

Street Address

New Bethlehem, Penna.

City and State

Contracted By

THE RINGGOLD CORPORATION

Distributor Name

Kittanning, Penna.

City and State

2 (a)i Date of Contract . March 24, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

In the County of Clarion—

Townships of—Perry

Toby

Madison

Porter

Licking

Piney

Monroe

Redbank

Limestone

[fol. 1389]

1. **BAILEY SALES AND SERVICE,
INCORPORATED**
Distributor Name

1130 Butler Avenue
Street Address

New Castle, Pennsylvania
City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Lawrence
Mercer

On August 1, 1957 Selling Territory changed to:

State of Pennsylvania:

Counties of—Lawrence
Mercer

All of Beaver County except the
Townships of—Hanover
Independence
Hopewell
Harmony
Economy

[fol. 1390]

1.

N. C. KUHN

Distributor Name

1480 Mt. Jackson Road

Street Address

New Castle, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Lawrence

[fol. 1397]

1.

FOWLER AND FOWLER, INC.

Distributor Name

41-61 Main Street

Street Address

Oil City, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof

June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

May 27, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Venango

Forest

Clarion

Jefferson

Mercer

Erie

Crawford

[fol. 1402]

1.

KIRK BROTHERS, INC.

Dealer Name

325 N. Front St.

Street Address

Philipsburg, Pennsylvania

City and State

Contracted By**Clyde S. Peterman & Sheldon E. Peterman**

d.b.a.

PETERMAN'S GARAGE

Distributor Name

Altoona, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:**County of Clearfield and the following****Townships of—Decatur**

Cooper	Bradford
Graham	Boggs
Karthauss	Goshen
Covington	Knox
Morris	Lawrence
Girard	Bigler
	Woodward

County of Centre—the township of Rush only

[fol. 1404]

1.

DAUB MOTORS, INC.

Dealer Name

123 South Main Street

Street Address

Pine Grove, Pennsylvania

City and State

Contracted By

READING TRUCKS, INC.

Distributor Name

Reading, Pa.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Townships of—

Foster

Barry

Eldred

Hubley

Reilly

Washington

Pine Grove

Tremont

Fraley

Upper Mahantongo

Porter

Hegins—all in

County

of

Schuylkill

[fol. 1410]

1. **DIAMOND T READING COMPANY**

Distributor Name

Pottsville Pike

Box 247, R. F. D. #2

Street Address

Reading, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
July 7, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Berks

[fol. 1415]

1. SCRANTON WHITE-AUTOCAR TRUCKS, INC.

Distributor Name

620 West Linden Street

Street Address

Scranton 3, Pa.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Lackawanna
Susquehanna
Wayne

On May 16, 1955 Selling Territory changed to:

State of Pennsylvania:

Counties of—Lackawanna
Susquehanna
Wayne

Excluding the account of Fowler & Williams, 1300 Neylert St., Scranton, Pa. until such time that it is mutually agreed between the Distributor and The White Motor Company, that the Distributor is in a favorable position to acquire New truck business from the above named customer, at which time the account is to revert back to Scranton White-Autocar Truck, Inc.

[fol. 1418]

1. **SUSQUEHANNA VALLEY WHITE TRUCK
COMPANY**

Distributor Name

North Market Street

Street Address

Selinsgrove, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Snyder

Mifflin

Juniata

Union

Montour

Northumberland

[fol. 1420]

1. **BAILEY SALES & SERVICE, INC.**

Distributor Name

1320 State Street

Street Address

Sharon, Pennsylvania

City and State

2 (a)i Date of Contract September 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

County of—Mercer

[fol. 1423]

1.

R. A. Snyder**d.b.a.****SNYDER'S GARAGE**


Dealer Name

North Main Street

Street Address

Slippery Rock, Pennsylvania

City and State

 **Contracted By****A. R. BOARTS**

Distributor Name

Bulter, Pennsylvania

City and State

2 (a)i Date of Contract . January 1, 1957

2 (a)ii Termination Date of Contract

• 2 (b) Selling Territory Assigned:

State of Pennsylvania:**Townships of—Slippery Rock****Mercer****Marion****Cherry****Vanango****Allegheny****—all in the County of Butler**

[fol. 1426]

1.

RINGLER MOTORS, INC.—
SOMERSET BRANCH
Distributor Name

.....
Street Address

Somerset, Pennsylvania
City and State

2 (a)i Date of Contract September 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

All of Somerset County with the exception of
the townships of—Addison
Conemaugh
Paint
Ogle

[fol. 1427]

1.

J. P. McNELLY CO.
Key Dealer Name

465 W. Main St.
Street Address

Somerset, Penn.
City and State

Contracted By

RINGLER MOTORS, INC.
Distributor Name

Johnstown, Penn.
City and State

2 (a)i Date of Contract October 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Somerset County, Penn.
For School Busses only.

[fol. 1428]

1. **MORRIS BERMAN AND COMPANY**

Distributor Name

Route 422

Street Address

Stowe, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—*Montgomery*—with the exception
of the following

Townships of—Cheltenham

Abington

Lower Merion

Springfield, and the account
of M. Tose and Sons,
Norristown, Pa.*Bucks*—the following

Townships of—Plumstead

New Britain

Buckingham

Doylestown

Warrington

Warwick

Northampton

Warminster

Chester—the following

Townships of—North Coventry

East Coventry

East Vincent

East Pikeland

Schuylkill with the excep-
tion of Jones Motor
Freight Account in
Spring City, Pa.

[fol. 1431]

G. M. Gleason and R. M. Davis

1. d.b.a.

MOTOR SALES AND SERVICE

Distributor Name

72 East Fayette Street

Street Address

Uniontown, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

All of the county of Fayette

[fol. 1433]

1. **COMLY MOTOR SALES**

Dealer Name

Unionville—Fleming Post Office

Street Address

Unionville, Pennsylvania

City and State

Contracted By

Clyde S. Peterman & Sheldon E. Peterman

d.b.a.

PETERMAN'S GARAGE

Distributor Name

Altoona, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

All of Center County with the exception of
Townships of—Rush

Taylor

and Worth

[fol. 1435]

1. BOWEN WHITE TRUCK, INC.

Distributor Name

1812 Pennsylvania Ave., W.

Street Address

Warren, Pennsylvania

City and State

2 (a)i Date of Contract September 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—McKean (Excluding City of
Bradford)

Potter

Warrent (Excluding Wm. F.
Crossett Co., Inc.)

On April 15, 1957 Selling Territory changed to:

State of Pennsylvania:

Counties of—Forest

(Townships of—Harmony

Kingsley

Hickory

Green &

Tionesta only)

McKean (Excluding City of
Bradford)

Potter

Venango

Warren (Excluding Wm. F.
Crossett Co., Inc. War-
ren, Pa.)

[fol. 1437]

1. **FOX & JAMES WHITE TRUCK CO.**

Distributor Name

610 West Chestnut Street

Street Address

Washington, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

All of Washington County

Township of—Rostraver—in the county of
Westmoreland

[fol. 1439]

1. **C. S. BRUBAKER**

Distributor Name

Market and Adams Streets

Street Address

West Chester, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Portion of Chester County, South and West of
R #322 from Honeybrook to Downingtown, Pa.,
thence South of Rt. #32 to Paoli, Pa., thence
South along township line to Delaware County,
also the following townships in Delaware
County: Edgemont, Thornbury, Concord and
Birmingham. Exception: Mushroom Trnsp.
Co., Inc., Kenneth Square, Pa. sold through the
Philadelphia Branch.

350

[fol. 1442]

Walter L. Fish

1.

d.b.a.

ECK'S GARAGE

Distributor Name

645 E. Third Street

Street Address

Williamsport, Pennsylvania

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Clinton

Lycoming

Sullivan

[fol. 1443]

1.

RAY'S GARAGE

Distributor Name

394 E. 2nd Avenue

Street Address

Williamsport, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof

• January 28, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Lycoming

Clinton

Sullivan

Union

Montour

Northern half of Northumberland
from and East-West line from
Elysburg to town of Northumber-
land.

[fol. 1445]

1.

ROWE AND PETRIE GARAGE

Distributor Name

South Main Street

Street Address

Yagertown, Pennsylvania

City and State

2 (a)i Date of Contract or Assumption Thereof
January 1, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—Mifflin

Snyder

Jaunita

Perry

Huntington

Center

[fol. 1447]

1. SNYDER AUTO SERVICE COMPANY

Distributor Name

231 West Market Street

Street Address

York, Pennsylvania

City and State

2 (a)i Date of Contract, January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Pennsylvania:

Counties of—York

Adams—

Townships of—Latimore

Huntington

Tyrone

Reading

Hamilton

Berwick

Oxford

Conewago

Union

Germany

Mt. Pleasant

[fol. 1449]

1. **BURNS & CRUSOE TRUCK SALES**

Distributor Name

923 Cranston Street

Street Address

Cranston, Rhode Island

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
February 13, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Rhode Island:

Entire state of R. I. and in the state of Massa-
chusetts, Bristol County.

[fol. 1453]

1. NEW ENGLAND TRUCK CENTER, INC.

Distributor Name _____

40 Branch Avenue

Street Address

Providence, Rhode Island

City and State

2 (a)i Date of Contract January 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Rhode Island:

Counties of—Providence

Kent

Washington

Bristol

Newport

State of Massachusetts:

Counties of—Dukes

Nantucket

Bristol:

Townships: Attleboro

N. Attleboro

Norton

Acushnet

Dartmouth

Fair Haven

New Bedford

Westport

Dighton

Fall River

Freetown

Rehoboth

Somerset

Seekonk

Swansea

Norfolk:

Townships of: Bellingham

Franklin

Norfolk

Plainville

Wrentham

[fol. 1457]

1. SOUTHERN TRUCK COMPANY, INC.

Distributor Name

1808 Meeting Street Road

Street Address

Charleston, South Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of South Carolina:

Counties of—Berkeley

Charleston

Colléton

Dorchester

Georgetown

Horry

Williamsburg

[fol. 1459]

1. **SOUTHEASTERN EQUIPMENT, INC.**

Distributor Name

1105 Pulaski Street

Street Address

Columbia, South Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of South Carolina:

Counties of—Calhoun

Chesterfield

Clarendon

Darlington

Dillon

Fairfield

Florence

Kershaw

Lee

Lexington

Marion

Marlboro

Orangeburg

Richland

Sumter

On December 31, 1955 Selling Territory changed to:

State of South Carolina:

Counties of—Calhoun

Clarendon

Darlington

Dillon

Fairfield

Florence

Kersaw

Lee

Lexington

Marion

Marlboro

Orangeburg

Richland

Sumter

[fol. 1461]

1. **CHRISTOPHER WHITE TRUCK SALES**

Distributor Name

New Buncomb Road

Street Address

Greenville, South Carolina

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of South Carolina:

Counties of—Anderson

Cherokee

Chester

Greenville

Greenwood

Laurens

Newberry

Oconee

Pickens

Saluda

Spartanburg

Union

[fol. 1465]

1. **MAHONEY EQUIPMENT COMPANY**

Distributor Name

P. O. Box 1090

Street Address

Rapid City, South Dakota

City and State

2 (a)i Date of Contract May 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of South Dakota:

Counties of—Butte

Meade

Harding

Lawrence

Pennington

Haakon

Custer

Fall River

Jackson

Shannon

Washabaugh

Bennett

[fol. 1468]

1.

B. H. CHESLEY CO.

Key Dealer Name

Minnesota at 42nd Street

Street Address

Sioux Falls, South Dakota

City and State

Contracted By

WILCOX & CHESLEY INC.

Distributor Name

Mankato, Minnesota

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of South Dakota:

Sioux Falls and all territory in South Dakota
in Wilcox & Chesley, Inc. contract also in Lyon
county in Iowa, and Nobles, Rock, Pipestone
and Murray counties in Minnesota

[fol. 1469]

1.

ULBERG AND VANDIVER

Distributor Name

325 N. Phillips Avenue

Street Address

Sioux Falls, South Dakota

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 8, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of South Dakota:

Entire State of N. Dakota, except counties of
Fall River, Custer, Pennington, Lawrence,
Meade, Butte, Clay, Union, Yankton and
Harding.

State of Minnesota:

Counties of—Pipestone
Rock
Nobles
Murray
Lincoln
Lyon

State of Iowa:

County of—Lyon

[fol. 1472]

1. **CHATTANOOGA WHITE TRUCK
COMPANY, INC.**

Distributor Name

115 Broad

Street Address

Chattanooga, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Alabama:

Counties of—DeKalb
Jackson

State of Georgia:

Counties of—Catoosa
Dade
Murray
Walker
Whitfield

State of Tennessee:

Counties of—Bradley	Meigs
Bledsoe	Monroe
Hamilton	Polk
McMinn	Rhea
Marion	Sequatchie

[fol. 1475]

1. FRANKLIN SERVICE AND SUPPLY, INC..

Key Dealer Name

P. O. Box 194 Public Square

Street Address

Franklin, Tennessee

City and State

Contracted By

HARTMAN WHITE INC.

Distributor Name

Nashville, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Tennessee:

Counties of—Bedford

Coffee

Cannon

Marshall

Rutherford

Williamson

[fol. 1479]

1.

BLACKWELL'S INC.

Distributor Name

110 Legion

Street Address

Johnson City, Tennessee

City and State

2 (a)i Date of Contract May 20, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Tennessee:

Counties of—Carter

Green

Johnson

Unicoi

Washington

[fol. 1484]

1.

**THE PARKS TRUCK &
EQUIPMENT COMPANY**

Distributor Name

319 Depot Avenue, N.E.

Street Address

Knoxville, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky:

Counties of—Bell

Laurel

Clay

Leslie

Harlan

Perry

Knox

Whitley

State of Tennessee:

Counties of—

Anderson

Greene

Johnson

Blount

Hamblen

Knox

Campbell

Hancock

Loudon

Carter

Hawkins

Morgan

Claiborne

Jefferson

Roane

Cocke

Sullivan

Scott

Grainger

Unicoi

Sevier

Union

Washington

State of Virginia:

Counties of—Lee

Smyth

Russell

Washington

Scott

Wise

On May 20, 1958 Selling Territory changed to:

State of Kentucky:

Counties of—Bell

Laurel

Clay

Leslie

Harlan

Perry

Knox

Whitley

State of Virginia:

Counties of—Lee

Russell

Scott

Smyth

Washington

Wise

State of Tennessee:

Counties of—Anderson, Blount, Cambell, Claiborne, Cocke, Grainger, Hamblen, Hancock, Hawkins, Jefferson, Knox, Loudon, Morgan, Roane, Scott, Sevier, Union, Sullivan except the City of Kingsport, Tenn., however, in the city of Kingsport, Tenn. the following accounts are assigned:

See list attached hereto.

[fol. 1485]

**SUPPLEMENT TO DISTRIBUTOR SELLING
AGREEMENT—CITY OF KINGSFORT,
TENNESSEE**

*Distributor—The Parks Truck & Equipment Company—
Knoxville, Tennessee*

Armstrong Construction Co.	Coca-Cola Bottling Works
Ace Van Lines	Clinchfield Supply Company
Associated Transport, Inc.	Curtis, Jack
Appalachian Truck Rental, Inc.	Checker & Yellow Cab
The American Thread Co.	Concrete Protessed Company
Brooks Sand & Gravel Co.	Cooper, P. C.
Baker, W. C.	Clinchfield Concrete Company
B & T Mining Company	Chem. Dent. Prod. Co.
Bridwell Packing Company	Craft Transport Company
Berry, James A.	Doyns-Taylor Hdwe. Company
Barb, N. V.	Driver, Charles
Brown Equip. & Mfg. Company	Dance Freight Lines
Bristol Metal Products	Edmonds Broco, Inc.
Bradley, Irene J.	Estes, Roy L.
Barker, Kelly	Elsea, Glen E.
Brick Delivery Company	Fleener, C. H.
Bradley, Geo. E. Jr. & Fred	

General Shale Prod. Co.
 Gardner Equipment Co.
 Green Hdwe. & Supply Co.
 Gibbons Lbr. Company
 Gaines-Rosenbaum Co.
 Gott, Ralph S.
 Galloway Milling Company
 Hicks, J. I.
 Holston Steel Structure,
 Inc.
 Hatner, R. C. Company
 Johnson Bros. Auto Sales
 Jeter, W. C.
 J & L Moving & Storage
 Jones, Stonewall J.
 Kennedy, R. E.
 Karokas, George
 Kingsport Paving Company
 Kingsport Lbr. & Supply
 Co.
 Kite, Ula C.
 Lemmons Trans. Co. Inc.
 Lee, Charles
 Lackey Block Company
 Lawson, J. D.
 McClung, D. M. & Company
 Mills, C. B.
 Mead, The Corporation
 Meade, D. T. Jr.
 Meade, Guy B.
 Modern Bakery
 Musick, W. R.
 Minton, Mary F.
 McCrary, Noah E.
 Moore, Rob B. Inc.
 Moore, C. H.
 Minton, R. E.
 Milton, Ida
 McClelland, C. B.
 Owens, David L.
 Power Equipment Co.
 Pine Lumber Company
 Pierce Ditching Company

Pet Dairy Products Co.
 Peters, The Company
 Phillips, Cecil Joe
 Price, H. E.
 Rogers, R. T.
 Roberts & Johnson Lbr. Co.
 Redgefields Nursery, Inc.
 Robinson Trsf. Motor Lines
 Riggs Bros. Constr. Co.
 Ramsey, Thomas R.
 Rechts Bakery
 Roberts, Thomas E.
 Security Feed & Seed Co.
 Southern Oxygen Co.
 Silver Fleet Motor Express
 Slaters, Henry C.
 Smith, Felix J.
 Spears, Solomon, C.
 Shumaker, Don W.
 Steele, Paul H.
 Short, M. G.
 Smith, F. J.
 Steadham, Jack W.
 Steadham, Robert No.
 Still Welding & Erecting Co.
 Tennessee Eastman
 Company
 Tranbarger, Hubert
 Tennessee Equipment Co.
 Tester, W. E.
 Tipton Construction Co.
 Transcontinental Leasing
 Corp.
 Tennessee Iron & Metal Co.
 Tri-State Coal & Lbr. Co.
 United Warehouse Trans.
 Walling, L. H.
 Wards Hatchery & Feed
 Williamson, Aileen C.
 Wayne Constr. Co. Inc.
 Ward, T. R.
 Willis, Robert & Glen H.
 Guy

[fol. 1490]

1. SOUTHERN WHITE SALES COMPANY

Distributor Name

174 East

Street Address

Memphis, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Arkansas:

Counties of—Craighead
Crittenden
Cross
Greene
Lee
Monroe

Mississippi
Phillips
Poinsett
St. Francis
Woodruff

State of Mississippi:

Counties of—Alcorn
Benton
Bolivar
Coahoma
DeSoto
Lafayette
Marshall
Panola

Quitman
Tallahatchie
Tate
Tippah
Tunica
Union
Yalobusha

State of Tennessee:

Counties of—Benton
Carroll
Chester
Crockett
Decatur
Dyer
Fayette
Gibson
Hardeman
Haywood

Henderson
Henry
Lake
Lauderdale
McNairy
Madison
Obion
Shelby
Tipton
Weakley

State of Missouri:

Counties of—Pemiscott, Dunklin, and that part of New Madrid south of a line drawn directly west from the Tennessee-Kentucky line following the Mississippi River to a point directly south of the town of New Madrid, Mo. and thence west to the junction of New Madrid and Stoddard counties.

On September 1, 1955 Selling Territory changed to:

State of Arkansas:

Counties of—	Craighead	Mississippi
	Crittenden	Phillips
	Cross	Poinsett
	Greene	St. Francis
	Lee	Woodruff
	Monroe	

State of Mississippi:

Counties of—	Alcorn	Prentiss
	Benton	Quitman
	Bolivar	Tallahatchie
	Coahoma	Tate
	DeSoto	Tippah
	Lafayette	Tishomingo
	Lee	Tunica
	Marshall	Union
	Panola	Yalobusha
	Pontotoc	

State of Tennessee:

Counties of—	Benton	Henderson
	Carroll	Henry
	Chester	Lake
	Crockett	Lauderdale
	Decatur	McNairy
	Dyer	Madison
	Fayette	Obion
	Gibson	Shelby
	Hardeman	Tipton
	Haywood	Weakley

[fol. 1491] State of Missouri:

Counties of—Pemiscott, Dunklin, and that part
of New Madrid south of a line
drawn directly west from the
Tennessee-Kentucky line follow-
ing the Mississippi River to a
point directly south of the town
of New Madrid, Mo. and thence
west to the Junction of New
Madrid and Stoddard counties.

[fol. 1492]

1.

FRANK WHITINGTON, INC.

Distributor Name

259 E. Webster Avenue, P. O. Box 2192

Street Address

Memphis, Tennessee

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 14, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Tennessee:

State of Tennessee, all counties South and West
and including Lake, Obion, Weak-
ley, Henry, Benton, Decatur,
Hardin and Madison.

State of Mississippi:

All counties North of and including Washing-
ton, Sunflower, Leflore, Carroll,
Montgomery, Choctaw, Oktib-
beha, and Lowndes.

State of Arkansas:

, Counties of—Fulton

Izard

Sharp

Randolph

Clay

Lawrence

Greene

Jackson

Craighead

Mississippi

Poinsett

Woodruff

Cross

Crittenden

St. Francis

Monroe

Lee

Phillips

[fol. 1495]

1.

HARTMAN WHITE, INC.

Distributor Name

119 16th Avenue, North

Street Address

Hashville, Tennessee

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Kentucky:

Counties of—Allen

Christian

Cumberland

Logan

Monroe

Simpson

Todd

Trigg

Warren

State of Tennessee:

Counties of—

Bedford

Cannon

Cheatham

Clay

Coffee

Cumberland

Davidson

DeKalb

Dickson

Fentress

Franklin

Giles

Grundy

Hardin

Hickman

Houston

Humphreys

Jackson

Lawrence

Lewis

Lincoln

Macon

Marshall

Maurý

Montgomery

Moore

Overton

Perry

Pickett

Putnam

Robertson

Rutherford

Smith

Stewart

Sumner

Trousdale

Van Buren

Warren

Wayne

White

Williamson

Wilson

[fol. 1500]

1. ABILENE WHITE TRUCK COMPANY

Distributor Name

801 South 11th Street (P. O. Box 1778) Abilene

Street Address

Abilene, Texas

City and State

2 (a)i Date of Contract May 21, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1503]

1. PANHANDLE WHITE TRUCK SERVICE

Distributor Name

3810 N. E. Eighth

Street Address

Amarillo, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1504]

1.

TRUCK SERVICE CENTER

Distributor Name

3104 N. E. 8th Street

Street Address

Amarillo, Texas

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 4, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Texas:

Counties of—

Dallam	Hemphill	Armstrong
Sherman	Oldham	Donley
Hansford	Potter	Collingsworth
Ochiltree	Carson	Parmer
Lipscomb	Gray	Castro
Hartley	Deaf	Swisher
Moore	Wheeler	Hall
Hutchinson	Smith	Briscoe
Roberts	Randall	Christie

State of New Mexico:

Counties of—Roosevelt
Curry

[fol. 1507]

1. AUSTIN TRUCK AND MACHINERY
COMPANY, INC.

Distributor Name

7511 Interregional Highway

Street Address

Austin, Texas

City and State

2 (a)i Date of Contract January 16, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1510]

1. WHITE TRUCK SALES AND SERVICE, INC.

Distributor Name

1090 North Pearl

Street Address

Beaumont, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1513]

1. SID BOLDING MOTORS, INC.

Distributor Name

312 State Street

Street Address

Big Spring, Texas

City and State

2 (a)i Date of Contract June 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1517]

1. SOUTH TEXAS WHITE TRUCK COMPANY

Distributor Name

444 Campbell Lane

Street Address

Corpus Christie, Texas

City and State

2 (a)i Date of Contract May 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1522]

1. EL PASO WHITE TRUCK CO.

Distributor Name

1615 East Paisano Drive

P. O. Box 1797

Street Address

El Paso, Texas

City and State

2 (a)i Date of Contract June 6, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1530]

South Texas White Truck Service

1. d.b.a.

VALLEY WHITE TRUCK SERVICE

Distributor Name

1119 West Harrison

Street Address

Harlingen, Texas

City and State

2 (a)i Date of Contract October 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1534]

1. **PLAINS WHITE TRUCK COMPANY, INC.**

Distributor Name

2436 Avenue H

Street Address

Lubbock, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1539]

1. **WEST TEXAS WHITE TRUCK
EQUIPMENT COMPANY**

Distributor Name

2121 East Second P. O. Box 605

Street Address

Odessa, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1545]

1. **SID BOLDING MOTORS, INC.**

Distributor Name

Chadbourne and Fourth

Street Address

San Angelo, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1548]

1. **ALAMO WHITE TRUCK SERVICE.**

Distributor Name

816 Probandt

Street Address

San Antonio, Texas

City and State

2 (a)i Date of Contract July 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1553]

1. **BURCH MOTOR COMPANY, INC.**

Distributor Name

5th and Texas Streets

Street Address

Texarkana, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1555]

1. **QUALITY MOTORS, INC.**

Distributor Name

314 North Broadway

Street Address

Tyler, Texas

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1560]

1. **HODGES WHITE TRUCK COMPANY**

Distributor Name

606 East Scott

Street Address

Wichita Falls, Texas

City and State

2 (a)i Date of Contract June 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

[fol. 1562]

1. **JONES MOTOR COMPANY**

Dealer Name

380 South Main

Street Address

Cedar City, Utah

City and State

Contracted By

LINDNER & WOOD WHITE MOTOR SALES

Distributor Name

Salt Lake City, Utah

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Utah:

Counties of—Iron

Beaver

Washington

Kane

[fol. 1565]

1. LINDNER AND WOOD WHITE MOTOR SALES .

Distributor Name

712 South Second West St.

Street Address

Salt Lake City, Utah .

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Utah:

All counties

State of Wyoming:

Counties of—Lincoln

Sweetwater

Sublette

Uinta

Teton

State of Idaho:

Counties of—Bannock

Bear Lake

Bingham

Bonnevile

Butte

Madison

Power

Caribau

Clark

Franklin

Fremont

Jefferson

Oneida

Teton

Excluding sales of equipment to
National Parks

[fol. 1566]

1. **REO McMURDIE COMPANY, INC.**

Distributor Name

4051 S. State Street

Street Address

Salt Lake City, Utah

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 2, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Utah:

Entire State of Utah except counties of Grand
and San Juan.

State of Nevada:

Counties of—Elko
White Pine

State of Idaho:

Counties of—Bannock	Power
Bonneville	Jefferson
Bingham	Caribou
Franklin	Bear Lake
Oneida	Jerome
Madison	Cassia
Teton	Minidoka
Fremont	Twin Falls
Clark	

[fol. 1570]

1.

BREWER BROTHERS, INC.

Distributor Name

1 North Avenue

Street Address

Burlington, Vermont

City and State

2 (a)i Date of Contract or Assumption Thereof*
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 6, 1958.

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Vermont:

City of Burlington and vicinity.

[fol. 1573]

1. **TRANSPORTATION CORPORATION
OF AMERICA**

Distributor Name

2765 Jefferson Davis Highway

Street Address

Arlington, Virginia

City and State

2 (a)i Date of Contract January 15, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

The District of Columbia

The following Counties in the State of Maryland:

Montgomery

St. Mary's

Prince George's

Calvert

Charles

The following counties in the State of Virginia:

Arlington

Fairfax

Loudon

Fauquier

Prince William

City of Alexandria

[fol. 1574]

1. **TRANSPORTATION CORPORATION
OF AMERICA**

Distributor Name

2765 Jefferson Davis Highway

Street Address

Arlington, Virginia

City and State

2 (a)i Date of Contract or Assumption Thereof
March 19, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Virginia:

District of Columbia

State of Maryland:

Counties of—Montgomery

St. Mary's

Prince

George's

Calvert

George

State of Virginia:

Counties of—Arlington

Fairfax

London

Fauquier

Prince William

City of Alexandria

[fol. 1577]

1. HARVILLE MOTOR COMPANY, INC.

Distributor Name

1106 Riverside Drive

Street Address

Danville, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—Halifax

Henry

Pittsylvania

State of North Carolina:

Counties of—Caswell

Person

[fol. 1581]

1. HAMPTON ROADS REO TRUCK SALES

Distributor Name

Rip Rap Road P. O. Box 170

Street Address

Hampton, Virginia

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
June 17, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Cities of—

Hampton & Newport News and Vicinity.

[fol. 1585]

1. JOHN P. HUGHES MOTOR COMPANY, INC.

Distributor Name

800 Commerce Street

Street Address

Lynchburg, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—Amherst

Appomattox

Bedford

Buchingham

Campbell

Charlotte

Nelson

[fol. 1588]

1. LUMPKIN WHITE TRUCK COMPANY

Distributor Name

814—39th St., P. O. Box 511

Street Address

Newport News, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—Elizabeth City

Gloucester

James City

Mathews

York

Warwick

[fol. 1590]

1. **NORFOLK WHITE TRUCK SALES
& SERVICE, INC.**

Distributor Name

Route 13 Military Highway

Street Address

Norfolk, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—Isle of Wight
 Nansemond
 Norfolk
 Princess Anne
 Southampton
 Surry
 Sussex

State of North Carolina:

Counties of—Camden
 Chowan
 Currituck
 Gates
 Pasquotank
 Perquimans

On June 1, 1955 Selling Territory changed to:

State of Maryland:

Countys of—Wicomico, Worcester, Somerset,
 Dorchester, Talbot and lower half
 of Caroline County, with the ex-
 ception of one account namely
 Service Trucking Co., Federal-
 burg, Md.

State of Virginia:

Counties of—Isle of Wight
 Nansemond
 Norfolk
 Princess Anne
 Southampton

Surry
 Sussex
 Accomac
 Northampton

State of Delaware:

County of—Sussex

State of North Carolina:

Counties of—Camden
 Chowan
 Currituck

Gates
 Pasquotank
 Perquimans

[fol. 1593]

1. EUBANK WHITE TRUCK CORPORATION

Distributor Name

1812 Brook Road

Street Address

Richmond, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—

Albemarle	Green	Northumberland
Amelia	Hanover	Nottoway
Brunswick	Henrico	Orange
Caroline	King & Queen	Powhatan
Charles City	King George	Prince Edward
Chesterfield	King William	Prince George
Cumberland	Lancaster	Richmond
Culpeper	Louisa	Spotsylvania
Dinwiddie	Lunenburg	Stafford
Essex	Mecklenburg	Westmoreland
Fluvanna	Middlesex	Greensville
Goochland	New Kent	

[fol. 1594]

1. EUBANK WHITE TRUCK CORPORATION

Distributor Name

1812 Brook Road

Street Address

Richmond, Virginia

City and State

2 (a)i Date of Contract or Assumption Thereof
March 19, 19582 (a)ii Termination Date of Contract
Contract Replaced by New Contract on
Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—

Albermarle	Green	Northumberland
Amelia	Hanover	Nottoway
Brunswick	Henrico	Orange
Caroline	King & Queen	Powhatan
Charles City	King George	Prince Edward
Chesterfield	King William	Prince George
Cumberland	Lancaster	Richmond
Culpepper	Louisa	Spotsylvania
Dinwiddie	Lunenburg	Stafford
Essex	Mecklenburg	Westmoreland
Fluvanna	Middlesex	Greenville
Goochland	New Kent	

[fol. 1597]

1. FULTON WHITE TRUCK COMPANY, INC.

Distributor Name

1501 Shenandoah Ave., N. W. Box 1708

Street Address

Roanoke, Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—

Allegheny	Franklin	Pulaski
Augusta	Grayson	Roanoke
Bath	Highland	Rockbridge
Botetourt	Madison	Rockingham
Carroll	Montgomery	Shenandoah
Craig	Page	Wythe
Floyd	Patrick	

State of West Virginia:

County of—Pendleton

[fol. 1598]

1. **OLD DOMINION MOTOR CORPORATION
OF ROANOKE**

Distributor Name

308 Orange Avenue, N.E.

Street Address

Roanoke, Virginia

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 2, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Virginia:

Counties of—

Rockingham	Patrick	Bedford
Henry	Pulaski	Craig
Grayson	Campbell	Appomattox
Nelson	Botetourt	Roanoke
Floyd	Arlington	Augusta
Montgomery	Carroll	Franklin
Green	Roanoke	Wythe

[fol. 1609]

R. E. Arnett

1. d.b.a.

ARNETT WHITE TRUCK SALES

Key Dealer Name

2025 James Street

Street Address

Bellingham, Washington

City and State

Contracted By

FAGEOL MOTORS, INC.

Distributor Name

Seattle, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

Counties of—Whatcom

Skagit

San Juan

On January 10, 1957 Selling Territory changed to:

State of Washington:

Counties of—Whatcom

San Juan

[fol. 1610]

1.

FALTUS & PETERSON, INC.

Key Dealer Name

7th & Pearl

Street Address

Ellensburg, Washington

City and State

Contracted By

FAGEOL MOTORS, INC.

Distributor Name

Seattle 4, Washington

City and State

2 (a)i Date of Contract December 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

County of—Kittitas

[fol. 1615]

E. O. Pederson

1.

d.b.a.

ED PEDERSON SALES & SERVICE

Key Dealer Name

429 Third

Street Address

Raymond, Washington

City and State

Contracted By

FAGEOL MOTORS, INC.

Distributor Name

Seattle, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

3 (b) Selling Territory Assigned:

State of Washington:

County of—Pacific

[fol. 1618]

1.

FAGEOL MOTORS, INC.

Distributor Name

916 Maynard Avenue

Street Address

Seattle, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

Counties of—

Benton	Chelan	Island
Gray's Harbor	Kitsap	Kittitas
King	Okonogan	Pacific
Mason	Skagit	Snohomish
San Juan	Yakima	Douglas
Whatecom	Clallam	Jefferson

On July 2, 1956 Selling Territory changed to:

State of Washington:

Counties of—

Benton	Kitsap	Pacific
Gray's Harbor	Okonogan	Snohomish
King	Skagit	Douglas
Mason	Yakima	Jefferson
San Juan	Clallam	Lewis
Whatecom	Island	Thurston
Chelan	Kittitas	Pierce

[fol. 1620]

1. **REO WASHINGTON SALES
COMPANY, INC.**
Distributor Name

2401 Airport Way
Street Address

Seattle, Washington
City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
April 24, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Washington:

Counties of—Lewis	Snohomish
Pacific	Skagit
Grays Harbor	Island
Pierce	San Juan
Thurston	Watcom
King	Kittitas
Jefferson	Yakima
Clallam	Chelan
Mason	
Kitsap	

[fol. 1623]

1. JONES WHITE TRUCK COMPANY

Distributor Name

W 41 Second Avenue

Street Address

Spokane 4, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

Counties of—Adams

Asotin

Lincoln

Ferry

Garfield

Grant

Spokane

Pend Oreille

Stevens

Walla Walla

Whitman

Franklin

Columbia

State of Idaho:

Counties of—Benewah

Bonner

Boundary

Clearwater

Idaho

Kootenai

Latah

NezPerce

Shoshone

Lewis

State of Montana:

Counties of—Flathead

Granite

Lake

Lincoln

Mineral

Ravalli

Sanders

Missoula

[fol. 1627]

Frank Buchanan

1. d.b.a.

FRANK BUCHANAN SALES COMPANY

Key Dealer Name

Lincoln Avenue

Street Address

Tacoma, Washington

City and State

Contracted By

FAGEOL MOTORS, INC.

Distributor Name

Seattle 4, Washington

City and State

2 (a)i Date of Contract May 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

Pierce and Thurston Counties.

Fageol Motors, Inc., or their
agents, shall retain the right to
sell White Transit School Busses
in this territory.

[fol. 1629]

1.

McCOY AUTO COMPANY

Distributor Name

9th and "C" Streets

Street Address

Vancouver, Washington

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Washington:

Counties of—Cowlitz

Klickitat

Skamania

Wahkiakum

Clark

[fol. 1635]

1.

**TINDER WHITE TRUCK &
EQUIPMENT COMPANY, INC.**

Distributor Name

U. S. Highway #19—#21 & #460—East

Street Address

Bluefield, West Virginia

City and State

2 (a)i Date of Contract April 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of—Mercer

McDowell

Wyoming

State of Virginia:

Counties of—Bland

Buchanan

Dickenson

Giles

Tazewell

Distributor will not participate in
or solicit sales to the State Road
Commission.

[fol. 1691]

1.

REO SALES AND SERVICE

Distributor Name

222 Vine Street

Street Address

La Crosse, Wisconsin

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—La Crosse

Monroe

Vernon

Crawford

State of Minnesota:

County of—Houston

[fol. 1694]

1. SMITH WHITE TRUCK SALES, INC.

Distributor Name

210 South Thornton Avenue

Street Address

Madison, Wisconsin

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Adams

Columbia

Crawford

Dane

Dodge except the

Townships of—Chester

Leroy

Lomira

Grant

Greene

Iowa

Jefferson

Jeneau

Lafayette

Richland

Sauk

[fol. 1637]

1. **KANAWHA VALLEY MOTORS, INC.**
Distributor Name

5430 McCorkle Avenue, S.E.
Street Address

Charleston, West Virginia
City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 1, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

All Counties South of and including:

Wayne	Doedridge
Mason	Harrison
Cabell	Taylor
Wood	Barbour
Pleasant	Randolph
Ritchie	Pendleton

State of Virginia:

Counties of—Allegheny
Bath
Bland
Buchanan

Giles
Highland
Tazewell

State of Kentucky:

Counties of—Boyd
Floyd
Johnson
Lawrence

Magoffin
Martin
Pike

[fol. 1640]

1. CLARKSBURG WHITE TRUCK COMPANY

Distributor Name

916 West Pike Street

Street Address

Clarksburg, West Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of—Harrison

Barbour

Braxton

Calhoun

Doddridge

Gilmer

Lewis

Marion

Randolph

Ritchie

Taylor

Tucker

Tyler

Upshur

[fol. 1644]

1. MUELLER WHITE TRUCK COMPANY, INC.

Distributor Name

816 Seventh Avenue

Street Address

Huntington, West Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of—Cabell

Lincoln

Logan

Mason

Mingo

Wayne

State of Kentucky:

Counties of—Boyd

Carter

Elliott

Floyd

Greenup

Johnson

Knott

Lawrence

Letcher

Martin

Pike

State of Ohio:

Counties of—Gallia

Lawrence

Distributor will not participate in
or solicit sales to the State Road
Commission.

On July 1, 1956 Selling Territory changed to:

State of West Virginia:

Counties of—Cabell

Lincoln

Logan

Mason

Mingo

Wayne

State of Kentucky:

Counties of—Boyd

Carter

Elliott

Floyd

Greenup

Johnson

Knott

Lawrence

Letcher

Magoffin

Martin

Morgan

Pike

Rowan

State of Ohio:

Counties of—Gallia

Lawrence

Distributor will not participate in
or solicit sales to the State Road
Commission.

[fol. 1651]

1.

WILKINS MOTORS

Distributor Name

1389 University Avenue

Street Address

Morgantown, West Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of--Monongalia

Preston

State of Pennsylvania:

County of--Greene

[fol. 1655]

1. **PINEVILLE MOTOR SALES, INC.**
Dealer Name

.....
Street Address

Pineville, West Virginia
City and State

Contracted By

TINDER WHITE TRUCK & EQUIPMENT CO., INC.
Distributor Name

Bluefield, West Virginia
City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:
County of—Wyoming

[fol. 1658]

1. **CHARLESTON TRUCK & TRAILER
SERVICE, INC.**

Distributor Name

P. O. Box 8356, Route 60

Street Address

So. Charleston, West Virginia

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of—Kanawha

Boone

Clay

Fayette

Greenbrier

Jackson

Monroe

Nicholas

Pocahontas

Putnam

Raleigh

Roane

Summers

Webster

[fol. 1661]

1. **KING WHITE TRUCK SALES**

Direct Key Dealer Name

609 Division Street

Street Address

So. Parkersburg, West Virginia

City and State

2 (a)i Date of Contract July 1, 1958

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of West Virginia:

Counties of—Pleasants

Wirt

Wood

(Direct Key Dealer will not participate in or solicit sales to the State Road Commission.)

[fol. 1666]

1. **WHEELING WHITE TRUCK COMPANY**

Distributor Name

2209 Main Street

Street Address

Wheeling, West Virginia

City and State

2 (a)i Date of Contract - January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned;

State of West Virginia:

Counties of—Ohio

- Hancock
- Marshall
- Wetzel

- Excluding City of Weirton in Hancock County.

State of Ohio:

Counties of—Belmont

Harrison

Monroe

Columbiana—the southern part,
between Mili Rock
and Homeworth, but
including these
towns.

On February 15, 1956 Selling Territory changed to:

State of West Virginia:

Counties of—Ohio

Marshall

Wetzel

State of Ohio:

Counties of—Belmont

Guernsey

Harrison

Monroe

Noble

[fol. 1673]

1. **BRUNER WHITE TRUCK SALES
& SERVICE INC.**

Key Dealer Name

804 Colby Street

Street Address

Beloit, Wisconsin

City and State

Contracted By

WADDELL WHITE TRUCK SALES INC.

Distributor Name

Rockford, Illinois

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Illinois:

City of South Beloit in Winnebago County

State of Wisconsin:

Counties of Walworth and Rock

408

[fol. 1675]

1.

WEST SIDE GARAGE

Dealer Name

262 Broadway Ave.

Street Address

Berlin, Wisconsin

City and State

Contracted By

TED'S GARAGE

Distributor Name

Sheboygan, Wisc.

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Waushara and Marquette

Townships of—Seneca, Berlin,
Princeton,
Brooklyn in
Green Lake
County.

Townships of—Wolf River,
Pygan, Rush-
ford and Nepue
in Winnebago
County.

[fol. 1679]

1. Q LITCHFIELD'S TRUCK SALES & SERVICE

Distributor Name

Washington Heights

Street Address

Eau Claire, Wisconsin

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Barron

Buffalo

Burnette

Chippewa

Clark

Dunn

Eau Claire

Jackson

Pepin

Polk

Price

Rusk

Taylor

Trempealeau

Sawyer

Washburn

Pierce

St. Croix

[fol. 1686]

1.

EARL'S MOTOR SALES

Distributor Name

404 Henry

Street Address

Green Bay, Wisconsin

City and State

2 (a)i Date of Contract July 1, 1957

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Brown

Outagamie

Oconto

Kewaunee

Door

Marinette

Forest

Florence

Vilas

Iron: and that part of Shawano County, east of the western boundaries of Richmond and Bell Plains Townships; and the Townships of Menasha and Neenah in Winnebago County.

[fol. 1690]

1.

PENGR BROS., INC.
Distributor Name

Third Avenue at Cass
Street Address

La Crosse, Wisconsin
City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Minnesota:

Counties of—Fillmore
Houston
Winona

State of Wisconsin:

Counties of—La Crosse
Monroe
Vernon

State of Iowa:

Counties of—Allamakee
Winnebago

[fol. 1706]

1. **MOTOR AND EQUIPMENT COMPANY**

Distributor Name

15 W. Marshall

Street Address

Rice Lake, Wisconsin

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
May 7, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Polk

Barron

Rush

Dunn

Chippewa

Eau Claire

Pepin

[fol. 1711]

1. CENTRAL WHITE MOTORS, INC.

Distributor Name

Street Address

Schofield, Wisconsin

City and State

2 (a)i Date of Contract January 1, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Marathon

Oneida

Lincoln

Langlade

Shawano—that part west of eastern boundaries of the townships of—Red Springs

Herman

Pella

[fol. 1712]

1. CERANSKI REO TRUCK & AUTO SALES

Distributor Name

Highway 51 Rothschild-Schofield Line

Street Address

Schofield, Wisconsin

City and State

2 (a)i Date of Contract or Assumption Thereof
January 1, 1958

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

County of—Marathon

[fol. 1714]

1.

TED'S GARAGE

Distributor Name

1123 Erie

Street Address

Sheboygan, Wisconsin

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wisconsin:

Counties of—Calumet: the townships of Ches-
ter, Leroy and Lomira in Dodge;
Fond du Lac, Green Lake, Mani-
towoc, Marquette, Sheboyga;
Waushara, and Winnebago ex-
cept the townships of Neenah
and Menasha.

[fol. 1719]

1. WEST BEND AUTO SALES AND SERVICE

Direct Dealer Name

403 N. Main Street

Street Address

West Bend, Wisconsin

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

City of West Bend, Wisconsin

[fol. 1722]

1. CENTURY WHITE TRUCK CO., INC.

Distributor Name

West Yellowstone Highway

Street Address

P. O. Box 419

Casper, Wyoming

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming:

Counties of—Aibany

Platte

Crook

Fremont

Converse

Natrona

Weston

Niobrara

Carbon

Johnson

Washakie

Campbell

Hot Springs

Goshen

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[fol. 1724]

1.

KLIPSTEIN MOTOR SALES

Direct Key Dealer Name

1716 Thomes Ave.

Street Address

Cheyenne, Wyoming

City and State

2 (a)i Date of Contract **May 29, 1958**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming;

County of—**Laramie**

[fol. 1726]

1.

THE DIAMOND HORSESHOE, INC.

Key Dealer Name

P. O. Box 917

Street Address

Laramie, Wyoming

City and State

Contracted By

CENTURY WHITE TRUCK CO., INC.

Distributor Name

Casper, Wyoming

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming:

County of—**Albany**

[fol. 1729]

1.

NEWCASTLE EQUIPMENT. CO.

Key Dealer Name

.....
Street Address**Newcastle, Wyoming**

City and State

Contracted By

CENTURY WHITE TRUCK, CO. INC.

Distributor Name

Casper, Wyoming

City and State

2 (a)i Date of Contract **January 1, 1955**

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming:

Counties of—**Weston****Crook****Campbell**

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[fol. 1731]

1. TRUCK EQUIPMENT & SUPPLY COMPANY

Key Dealer Name

Box 951

Street Address

Torrington, Wyoming

City and State

Contracted By

CENTURY WHITE TRUCK CO. INC.

Distributor Name

Casper, Wyoming

City and State

2 (a)i Date of Contract July 6, 1956

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming:

Torrington, Wyoming trade area

On July 6, 1956 Selling Territory changed to:

State of Wyoming:

Counties of—Wymong

Platte

Goshen

Niobrara

[fol. 1732]

1. TRUCK EQUIPMENT AND SUPPLY

Distributor Name

West Highway P. O. Box 951

Street Address

Torrington, Wyoming

City and State

2 (a)i Date of Contract or Assumption Thereof
June 5, 1957

2 (a)ii Termination Date of Contract

Contract Replaced by New Contract on
January 7, 1958

Termination Date of New Contract

2 (b) Selling Territory Assigned:

State of Wyoming:

Entire State of Wyoming

State of Nebraska:

Counties of—Sioux

Scotts Bluff

Banner

Kimball

Dawes

Box Butte

Morrill

Cheyenne

Sheridan

Garden

Deuel

[fol. 1734]

1.

H & S MOTOR CO.

Key Dealer Name

.....
Street Address**Worland, Wyoming**

City and State

Contracted By

CENTURY WHITE TRUCK CO. INC.

Distributor Name

Casper, Wyoming

City and State

2 (a)i Date of Contract January 1, 1955

2 (a)ii Termination Date of Contract

2 (b) Selling Territory Assigned:

State of Wyoming: :

The County of Washakie, plus selling privilege
in surrounding territory as agreed between H
& S Motor Co. and Century White Truck Co.
Inc.

[fol. 2423]

PLAINTIFF'S EXHIBIT (EDGERTON) 1



Distributor
SELLING AGREEMENT

JOHN L. BOILING WHITE TRUCK SALES
DISTRIBUTOR

NUMBER	No. 1 Bridge Street	STREET
CITY	Petaluma, California	STATE

The White Motor Company
Cleveland 1, Ohio

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This agreement made in triplicate this 1st day of January 1955 by and between
 The White Motor Company, Cleveland, Ohio, hereinafter called "Company" and

JOHN L. BOITANO WHITE TRUCK SALES

An Individual

~~Individual~~
~~Corporation~~

Petaluma
 City

Sonoma
 County

California
 State

hereinafter called "Distributor," witnesseth

In consideration of the mutual agreements herein contained, the parties hereto agree as follows

1. **SELLING PRIVILEGE AND TERRITORY** Distributor is hereby granted the exclusive right, except as hereinafter provided, to sell during the life of this agreement, in the territory described below, White and Autocar trucks purchased from Company hereunder

STATE OF CALIFORNIA: Territory to consist of all of Sonoma County, south of a
 (Description of Territory)

line starting at the western boundary, or Pacific Coast, passing through the

City of Bodega, and extending due east to the east boundary line of Sonoma County,

with the exception of the sale of fire truck chassis to the State of California

and all political subdivisions thereof.

2. **MERCHANDISING AGREEMENT** Distributor agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

Distributor agrees not to sell nor to authorize his dealers to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct key dealers, and direct dealers, and Distributor's key dealers and dealers are excepted throughout this paragraph.) Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing. Distributor further agrees to maintain a sales room and service station adequate for the sale and servicing of White and Autocar trucks in said territory and to purchase and display about his place of business authorized sales and service signs, the number of signs and their location to be determined by mutual agreement.

3. **ADJUSTMENT ON OUTSIDE DELIVERIES** Distributor agrees that should any new White or Autocar truck sold and delivered by him or any of his key dealers or dealers be first registered and/or placed in initial service within the territory of another of Company's distributors, direct key dealers or direct dealers, to pay to such other distributor, direct key dealer or direct dealer, an adjustment on each truck, provided he shall have received from such other distributor, direct key dealer or direct dealer, written notice of claim for adjustment within sixty (60) days after date of delivery into the other distributor's, direct key dealer's or direct dealer's territory, such adjustment to be the amount set forth in the latest issue of the applicable "Price List - Appendix A," "Price List - Appendix B," or "Price List - Appendix C."

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4. **STOCKING NEW TRUCKS.** Distributor agrees to purchase and keep on display at all times a representative stock of White and Autocar trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. For this purpose, it is contemplated that Distributor will carry a stock of White and Autocar trucks of a value equivalent to one-twelfth of his estimated annual new truck sales. Company, however, in continuation of its long established policy, will not ship any trucks to Distributor or his dealers except on Distributor's specific order.
5. **PRICES, DISCOUNTS AND TERMS.** Company agrees to sell to Distributor at Company's factory at Cleveland, Ohio, new White truck standard chassis, and at Company's factory at Exton, Pennsylvania, new Autocar truck standard chassis, including standard equipment and accessories mounted thereon, for cash in par funds at the respective prices and subject to the discounts, terms and provisions, or at the Distributor net prices and subject to the terms and provisions, set forth in Distributor price lists entitled "Price List—Appendix A," "Price List—Appendix B," "Price List—Appendix C," and the latest issue of Company's sales handbooks all of which are subject to change without advance notice. "Price List—Appendix A," "Price List—Appendix B," and "Price List—Appendix C," will be issued from time to time and the latest issues thereof shall become and be a part of this agreement. Prices will be increased by a flat charge to cover delivery costs from Cleveland, Ohio or Exton, Pennsylvania, to point of delivery, by the amount of manufacturer's preparation charge as shown in price lists, and by all sales, gross receipts, consumption, excise and any and all special taxes of whatever kind levied on the trucks so sold and in effect as of date of delivery, or in any way collectible or payable by Company with respect thereto. Company agrees to furnish Distributor itemized invoices for all chassis and equipment purchased hereunder, such invoices showing separately the selling prices of the chassis, bodies, cabs and equipment.
6. **PRICE PROTECTION.** In the event Company reduces the price of any truck which is in the stock of Distributor or any of his dealers, and is new, unused and unsold, and was purchased by Distributor from Company during the six (6) months next preceding such reduction, Company shall refund or credit to Distributor the difference between the price paid by Distributor to Company and the price he would have paid after such reduction; provided, however, written claim for such refund or credit, supported by evidence satisfactory to Company, is received by it from Distributor within thirty (30) days after the effective date of such price reduction. In case of trucks purchased by Distributor under a trust receipt or similar instrument, Company reserves the right to pay such difference in price to the holder thereof instead of to the Distributor.
- The production by Company of a new truck model or series of models, different from any previously sold to Distributor, regardless of price, shall not constitute a change in price within the meaning of this provision.
- Should Company increase the prices on any of its current truck models, Distributor may, within ten (10) days from receipt of notice of such increase, cancel all unshipped orders previously placed by him for trucks affected by the change except non-standard orders as referred to in Article 19.
7. **ANNUAL WHITE AND AUTOCAR TRUCK BONUS.** With respect to all White truck chassis listed in said "Price List—Appendix A" and "Price List—Appendix B," and Autocar truck chassis listed in "Price List—Appendix C," Distributor shall be entitled to an allowance hereinafter called "bonus," if and when the "Net Dollar Volume" equals or exceeds the "Net Dollar Volume" specified in the first or any succeeding bracket of the "Bonus Scale" below, such bonus to be computed by applying retroactively, the applicable "Rate of Bonus" in said Bonus Scale to the "Net Dollar Volume" then attained, but no bonus shall accrue until the "Net Dollar Volume" in said Bonus Scale reaches \$25,000.00.

BONUS SCALE

Rate of Bonus	Net Dollar Volume
1 1/4 %	\$25,000.00
2 1/4 %	35,000.00
3 %	50,000.00
3 %	70,000.00 and over

The words "Net Dollar Volume" in the above Bonus Scale mean the total amount (determined as stated below) received by Company for White and Autocar truck chassis which shall be purchased by and delivered to Distributor under this Agreement during any calendar year, "Net Dollar Volume" being subject to any adjustments, allowances or repurchases, irrespective of the calendar year during which the chassis involved in such ad-

[fol. 2427]

justment was delivered to Distributor. "Net Dollar Volume" shall be determined by deducting from the billing price to Distributor the prices, as herein agreed upon, of bodies, cabs, and equipment mounted on chassis and also all taxes, delivery charges, manufacturer's preparation charges as shown in price lists, advertising deposits, and finance charges, if any. Chassis so purchased and delivered shall be considered in order of delivery date.

The bonus shall be paid or credited to Distributor as soon as practicable after the end of each calendar year or as soon as practicable after termination of this contract during the calendar year; provided, however, that no bonus shall be paid until Company shall have received full settlement in cash, notes, or other evidences of indebtedness satisfactory to Company for the chassis included in the bonus computation and in every bonus computation all bonus previously paid or credited to Distributor with respect to trucks delivered in the same calendar year shall be deducted.

8. **DISTRIBUTOR COOPERATIVE ADVERTISING FUND** In order to establish a fund, to be known as "Distributor Cooperative Advertising Fund," Distributor agrees to pay, in addition to all other charges, the sum of Fifteen Dollars (\$15.00) for each White and Autocar truck purchased hereunder. To this fund Company shall also contribute the sum of Seven Dollars and Fifty Cents (\$7.50) for each truck so purchased. The combined fund shall be administered by Company to cover the cost of such advertising media as in the judgment of Company will most effectively promote the sale of White and Autocar products in Distributor's territory. Upon termination of this Agreement the unspent portion of Distributor's payments into said fund will be returned to him, less any amount then owing by him to Company.

9. **DEALER APPOINTMENTS** Distributor may, in order to further the sale thereof, appoint key dealers or dealers to sell and service White trucks and White parts within his territory, the key dealers or dealers so appointed and their locations to be subject to Company's approval. For this purpose Distributor shall use only the Company's standard forms—"White Key Dealer Selling Agreement" and/or "White Dealer Selling Agreement." Distributor will give Company advance notice of the cancellation of any such key dealer or dealer agreement.

10. **WHOLESALE OVERRIDE ON CHASSIS SALES TO KEY DEALERS** In the event Distributor sells at wholesale to any of his key dealers any new White standard truck listed in "Price List—Appendix A" or "Price List—Appendix B" and purchased hereunder, Company agrees to allow Distributor an amount which shall be called "Override" in addition to the discounts provided for in Article 5 above and the "Annual White and Autocar Truck Bonus" provided for in Article 7 above. The amount of the override shall be that specified for each model of new White truck listed in "Price List—Appendix A" and "Price List—Appendix B." The override is not allowable on any truck sold to a key dealer by Distributor and subsequently recovered and resold by Distributor at retail or at wholesale to one of his dealers, or on any such truck sold at wholesale by his key dealer to a dealer, or on any such truck repossessed, purchased, or repurchased by Distributor or Company from a key dealer or a finance company, bank or other organization which shall have repossessed, purchased or repurchased such truck from a key dealer, and in any such case this override, if already paid or allowed to Distributor, shall be charged back to him.

Within fifteen (15) days after the end of each calendar month, Distributor shall send to Company's designated office, a sworn report on form to be supplied by Company, listing all trucks sold and delivered from Distributor's stock (or, on Distributor's order, from Company's factory) to any of his key dealers (with copies attached of actual invoices therefor) and all trucks repossessed, purchased or repurchased by Distributor from any of his key dealers or from a finance company, bank, or other organization during the next preceding calendar month. Distributor shall include in this report any other information requested by Company, and all data and information in the report is open to verification by Company by audit of Distributor's records.

The override referred to in this section shall be paid to Distributor within thirty days after the receipt by Company's designated office of such report, subject, however, to the following conditions:

- that with respect to all the trucks so reported sold, all the terms, provisions and requirements of this Agreement and of the Key Dealer Selling Agreement and particularly as to standard prices and discounts, shall have been complied with and performed.
- that Company has on file at its Home Office in Cleveland, Ohio, copies in the latest revised form, of the Key Dealer's Selling Agreements with the key dealers to whom the reported sales were made, duly executed in each case by Distributor and key dealer and approved by Company.

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- 11. UNIFORM ACCOUNTING SYSTEM** It is to the mutual interest of Company and Distributor that uniform accounting systems and practices be maintained by Distributors in order that Company may develop standards of operating performance which will enable Distributors to obtain the most satisfactory results from sales potentials assigned to them, and which will enable Company to prepare composite guide statements periodically to guide Company in formulating policies beneficial to the interests of Distributors.
- Accordingly, Distributor will use and keep up to date at all times a Uniform Accounting System and will furnish to Company a complete and accurate financial and operating statement at the close of each quarter year showing the true and actual condition of Distributor's business. Distributor will maintain said system in accordance with the Accounting Manual prescribed by the Company.
- 12. SALES UNACCEPTABLE TO DISTRIBUTOR** In the event Distributor has an opportunity to sell a White or Autocar truck on terms and conditions unacceptable to him, Company, upon being so notified by Distributor, may itself handle such sale direct and compensate Distributor as may be mutually agreed upon, it being understood and agreed that in all such cases all rights and claims of Distributor to discount, bonus, service and handling allowance or otherwise will be automatically waived and released.
- 13. NATIONAL ACCOUNT AND GOVERNMENT SALES** Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a "National Account," as well as to the Federal or any State Government, or any department or political subdivision thereof, without any obligation whatever on the part of Company to Distributor except as hereinafter provided.
- 14. SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS** In the event Company sells any new White or Autocar truck listed in said "Price List—Appendix A," "Price List—Appendix B" or "Price List—Appendix C" direct to an individual, firm or corporation, designated by Company as a National Account (which classification does not include the Federal or State Governments or any department or political subdivision thereof) and such truck is first registered and/or placed in initial service within the above described territory, Company agrees, upon the conditions below stated, to pay to Distributor on each new truck so delivered an amount which shall be called "Service and Handling Allowance." The amount of the "Service and Handling Allowance" shall be that specified for each model of new White or Autocar truck listed in "Price List—Appendix A," "Price List—Appendix B," and "Price List—Appendix C," it being understood that such direct deliveries are subject to no further discount or bonus participation. Such "Service and Handling Allowance" shall be paid to Distributor in cash or credited to his account as Company may elect, provided: that Distributor agrees to cooperate with Company in developing such national account business to the fullest extent; that in each case Distributor shall have established local contact with the customers to whom such deliveries were made and/or shall have performed all functions of delivery, conditioning and service to the satisfaction of Company; and that written claim on the form provided by Company for such allowance shall be filed with Company within sixty (60) days after the delivery of such truck into Distributor's territory.
- 15. PARTS SALES TO NATIONAL AND FLEET ACCOUNTS** Distributor agrees to extend to firms and corporations, and subsidiaries of the latter, designated by Company as "National Accounts" or "Fleet Accounts," and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed the aforementioned accounts by Company.
- 16. PARTS SALES AND DISCOUNTS** Company will sell to Distributor new White, Autocar and Sterling-White parts and accessories listed in Company's latest revised parts books at the prices and discounts and on the terms and conditions as provided in the aforementioned "Price List—Appendix A," "Price List—Appendix B," and "Price List—Appendix C." Distributor agrees to purchase from Company and maintain at all times, an adequate stock of new White, Autocar and Sterling-White chassis parts and accessories to properly service White, Autocar or Sterling-White trucks operating in Distributor's territory, the quantity to be determined by mutual agreement. Distributor further agrees not to sell or use in the repair of White, Autocar or Sterling-White trucks, parts not manufactured, engineered or approved by Company.
- 17. PARTS BONUS** Company agrees to allow Distributor a bonus computed on the net amount of his purchases of all classes of new parts referred to above (except tires and tubes) during each calendar year. "Net amount of purchases" shall mean the Company's billing prices to Distributor for

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all such new parts (except tires and tubes) less any credits for returned purchases, and shall not include transportation, labor, or other miscellaneous charges. The rate of such bonus shall be 1% where the net amount of said purchases is more than \$4,000 but not more than \$5,000, 2% where it is in excess of \$5,000, but not more than \$10,000, 3% where it is in excess of \$10,000 but not more than \$20,000, 4% where it is in excess of \$20,000 but not more than \$30,000, and 5% where it is in excess of \$30,000. Such bonus shall be payable as soon as practicable after the end of each calendar quarter and payments shall include the accumulated bonus based on all purchases during the calendar year, less any bonus payments made previously for the calendar year; however, at Company's discretion no bonus accrued as of the end of each quarter shall be paid until Company has received full settlement in cash for all purchases included in the bonus computation.

18. RETURN OF PARTS Distributor may return White, Autocar and Sterling-White parts to such branch office of Company as Company shall specify, on these conditions, however: that the parts were purchased from Company by Distributor; that they are new, unused, current and in good condition; that Distributor has submitted to Company a list of such parts he desires to return on form provided by Company; that Company shall, as promptly as possible, notify Distributor as to the parts, on said list, if any, which Company will accept; that transportation charges be prepaid on the return of such parts; that distributor shall have complied with the requirements of Company in maintaining a stock of parts; and that in the return of any such goods Distributor shall fully comply with all Bulk Sales and other laws applicable thereto. Company shall accept those parts meeting the above conditions and credit Distributor with an amount equal to Distributor's net cost, adjusted on the then current prices of such parts, but less a charge of 5% to cover Company's expense of handling. Those parts not meeting the above conditions will be held by Company for thirty days subject to Distributor's order for disposition. Upon failure of Distributor to order disposition within that time, Company may make such disposition thereof as it sees fit without liability to Distributor for payment in any amount whatsoever.

19. NON-STANDARD ORDERS No order accepted by Company for products not manufactured by Company or not of standard specifications shall be subject to cancellation or return by Distributor without Company's express consent.

20. WARRANTY New White and Autocar trucks purchased hereunder are subject to the standard warranty of Company set forth in "Price List—Appendix A," "Price List—Appendix B," and "Price List—Appendix C," and no other warranty or guaranty, express or implied by law or otherwise, is authorized or shall apply to same.

21. DISTRIBUTOR NOT COMPANY'S AGENT It is not the intent that Distributor possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to Company's product other than contained in Company's standard warranty.

22. USE OF NAME The exclusive right to and use of, and the good will attached to, the marks and words, "White," "White Motor," "White Sales," "White Service," "Autocar," "Sterling" and "Sterling-White" and any combination thereof, with reference to motor vehicles and parts and accessories thereof, are reserved to Company and Distributor agrees that he will, upon termination of this agreement or at any time upon demand of Company, discontinue, cease and desist from the use and or display of these words.

23. RIGHT OF CANCELLATION This agreement and any renewal or extension thereof may be cancelled and terminated as below provided:

- (a) By mutual consent the parties hereto may at any time cancel and terminate this agreement forthwith.
- (b) Either party hereto, except as provided in paragraph (c) and (d) below, may cancel and terminate this agreement by giving the other party ninety (90) days' written notice of intention so to cancel.
- (c) In the event this agreement is the first selling agreement entered into between Company and Distributor, and if Distributor, since the effective date of this agreement, shall have been actively engaged in the merchandising of the Company's products in accordance with the terms, conditions and provisions of this agreement, the Company agrees that it will not exercise its right to cancel and terminate this agreement, pursuant to the provisions of paragraph (b) above, at any time during the first twelve (12) months period following the effective date of this agreement.

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- (d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Company may, at its option, cancel and terminate this agreement at any time without any notice whatsoever to Distributor, in case Distributor is a co-partnership or a corporation and disagreements of any nature shall arise between members of the co-partnership or the officers, stockholders or managers of the corporation whereby Company deems its interests may be imperiled; or in case of the incapacity, death or insolvency of Distributor; or in case an application is made to have Distributor declared bankrupt; or in case a receiver or trustee is appointed for Distributor; or in case Distributor makes an assignment for the benefit of creditors; or in case of breach of this agreement on the part of Distributor; or in case Distributor or any of its officers or managers shall be convicted under any criminal laws (either State or Federal); or in case Distributor or any of its officers or managers shall convert any property or embezzle any money either of third parties, or of Distributor in the case of officers or managers; or in case Distributor fails to secure a dealer's license or a renewal thereof in those states requiring dealers' licenses.

**24. TERMINATION
OF AGREEMENT**

Cancellation or termination of this agreement will not release Distributor from payment of any sum then owing to Company, nor from payment for trucks or equipment for same or parts ordered by Distributor and not delivered to him prior to termination

of notice of cancellation. Termination of this agreement shall operate as an automatic cancellation of all of the selling agreements between Distributor and his dealers and, without being required to await expiration of any termination notice period, Company or anyone it may designate shall have the right to enter into new agreements with any or all of said dealers. If during the termination notice period Distributor fails or is for any reason unable to furnish his dealers their requirements of White products, then Company or anyone designated by it may supply said dealers and Distributor shall in such event be entitled to the wholesale credits or overrides as provided in this agreement on the products so supplied during the termination notice period.

**25. COMPANY'S RIGHT
TO REPURCHASE**

Upon termination of this agreement by Company, Company agrees, (except with respect to the products referred to in Article 19) to purchase from Distributor and Distributor agrees to sell to Company within thirty days after such termination:

- (a) All new and unused White and Autocar truck chassis in good condition then owned by Distributor and purchased by him from Company during the six (6) months next preceding Company's notice of cancellation at Distributor's net cost including transportation charges paid to Company but less any bonus previously paid by Company to Distributor on such truck chassis, and without liability for any such bonus if not so previously paid.
- (b) All parts then owned by Distributor which in Company's opinion are new, unused, undamaged and in marketable condition at time and place of acceptance by Company and which were purchased by Distributor from Company for use on White, Autocar or Sterling-White chassis erected within a five year period next preceding Company's notice of cancellation, at Distributor's net cost (adjusted on the then current prices of such parts), exclusive of transportation charges, and less a charge of 5% to cover Company's expense of handling, and less any bonus previously paid by Company to Distributor on such parts and without liability for any such bonus if not so previously paid.

Upon cancellation and termination of this agreement by Distributor, or by natural expiration, or by mutual consent of the parties hereto, Company shall have the right and option to repurchase from Distributor within (30) days after the effective date of such cancellation and termination, any or all White or Autocar truck chassis and White, Autocar or Sterling-White parts then owned by Distributor, at the same prices specified in paragraphs (a) and (b) next preceding.

**26. PERFORMANCE
OF AGREEMENT**

It is understood and agreed that performance of this agreement by Company and the fulfillment of orders accepted hereunder are subject to strikes, accidents, fire, delays of transportation, commandeering of Company's factory and delays of sub-contractors

due to such causes, and also to requirements of and orders accepted by Company from duly constituted public authorities and other contingencies beyond Company's control, and that Company shall have the full right at its discretion to reject, wholly or in part, any order or specification for goods from Distributor. In no case shall Company be liable for damage or loss sustained by Distributor because of failure to deliver on or before stipulated delivery date. It is further understood and agreed that full performance of this agreement by Distributor is a condition precedent to performance thereof by Company, and that any failure by Company to enforce or to require performance by Distributor of any provision of this agreement or to exercise any option herein granted, shall in no way affect the validity of this agreement or impair the right of Company later to enforce any such provision or exercise any such option.

2430

[fol. 2431]

27. ENTIRETY All negotiations, correspondence and memoranda passing between the parties hereto with reference to the subject matter of this agreement are merged in this agreement, which cancels and supersedes all prior agreements between the parties hereto and constitutes the entire and only agreement between them with reference to said subject matter. This agreement may be altered, modified, or abridged only by written instrument duly executed by an Executive Officer of Company at Cleveland, Ohio, and no transfer of same or of any claim arising hereunder may or can be made without written consent from Company.

28. SEPARABILITY It is intended that this agreement shall not be in unlawful violation of any valid applicable laws now or hereafter from time to time in effect in any country, state or jurisdiction and that should any provision herein in anywise contravene said laws, this agreement shall be considered divisible as to such provision and the remainder of the agreement valid and binding as though such provision were not included therein.

29. DURATION OF AGREEMENT Company shall not be bound on this agreement, until it shall have been approved by an Executive Officer of Company. It shall then be effective on and as of the 1st day of January, 1955 and continue in effect, subject to the right of cancellation set forth above, until the end of the calendar year then current. Continuation of regular dealings between the parties hereto after the end of such calendar year shall extend this agreement for the next succeeding calendar year, and so on from year to year, subject always to the right of cancellation set forth above.

THE WHITE MOTOR COMPANY

JOHN L. BOITANO WHITE TRUCK SALES

Name of Distributor

Pacific Coast
Region

By *John L. Boitano*

Approved

March 7,

1955

N. O. Eushman
Sales Manager - Wholesale Division

Timothy R. Ruse
Executive Officer and Title

Timothy R. Ruse Secretary

INSTRUCTIONS

If distributor is:
INDIVIDUAL: Sign his personal name only.
INDIVIDUAL OPERATING UNDER TRADE NAME: Sign trade name and distributor should sign personal name underneath.
PARTNERSHIP: Sign partnership name and all partners should sign underneath.
CORPORATION: Sign corporate name and underneath signature of authorized officer (Pres., Secy., Treas.) with designation of title.

2431

[fol. 2432]

DETACH AND RETURN

City Petaluma State Calif. Date 5-4 1959

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix A (superseding all previous lists captioned Price List Appendix A) effective February 1, 1959, the terms of which are accepted and agreed to.

James R. Linder
Witness

John I. Baturo
Name of Distributor
John I. Baturo

2432

[fol. 2433]

DETACH AND RETURN

Petaluma Calif. *Dec 8 1919*

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List, Appendix B (superseding Appendix A, lists captioned Price List, Appendix B, effective February 1, 1919), the terms of which are accepted and agreed to

Samuel P. Crocker
Witness

John L. Balbois
Name of Distributor
John L. Balbois

2433

[fol. 2434]

DETACH AND RETURN

City Petaluma State Calif. Date 5-4 1959

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix C (superseding all previous lists captioned Price List Appendix C) effective February 1, 1959, the terms of which are accepted and agreed to.

Hennrich Blocher
WitnessJohn L. Butane
Name of Distributor
By John L. Butane

2434

[fol. 2435]

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE☐ Deliver **ONLY** to
addressee☐ Show address where
delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

John L. Barton

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Victor L. Barton

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

12-23-58

CSB-18-71942-6 GPO

243✓

[fol. 2436]

THE WHITE MOTOR COMPANY

CLEVELAND 9, OHIO

December 18, 1958

W. O. GRESHAM
Director of
Wholesale Operations

REGISTERED MAIL
RECEIPT REQUESTED

TO ALL DISTRIBUTORS

The White Motor Company, as a result of numerous requests from its selling organization, will, on January 1, 1959, change to a "net price tax included" basis of pricing parts, which means that no federal excise tax will be separately billed on any purchases made by you, on or after January 1, 1959, since any applicable federal excise tax will be included in the billing price.

In computing the parts volume bonus in the past, federal excise taxes billed to you have always been excluded in arriving at the parts volume bonus base. Under this net pricing set-up, the federal excise tax will be included in the billing price and it will be necessary to adjust this amount to remove any excise tax therefrom. This will be accomplished by reducing the total of the net billings includable in the volume bonus base by 6%. (The actual tax add-on factor is 8%; however, the lower reduction figure is being used to allow for tax exempt parts which have no tax add-on.)

Effective January 1, 1959 and for each year thereafter, so long as the "net price tax included" basis of pricing parts is in effect, the "net amount of certain purchases" as presently computed under our contract (including all supplements) with you shall be reduced by 6%, to adjust for the federal excise tax included therein, to arrive at the net amount for the purpose of computing the parts volume bonus.

In the near future we shall revise our Selling Agreement with you; however, until such time, this letter shall constitute a part of our present contract with you.

Will you please sign and return the attached copy acknowledging receipt and acceptance of the above terms.

Very truly yours,

THE WHITE MOTOR COMPANY

W. O. Gresham
W. O. Gresham

Received and Accepted:

John A. B. T...
(Distributor's Name)

W. O. Gresham
(Location)

2436

FOR MORE THAN 25 YEARS THE GREATEST NAME IN

[fol. 2437]

D.S.-4.
10-98

Attached to and made a part of Distributor Selling Agreement between

JOHN L. BOLTANO WHITE TRUCK SALES

AND The White Motor Company

Dated 3/7/55, as heretofore amended

For a valuable consideration moving from each to the other, the above stated parties to said Distributor Selling Agreement hereby agree to amend and to supplement the same as follows:

Article 17 of said Contract, under the caption "Parts Bonus" is hereby deleted and the following new Article 17 is substituted in lieu thereof:

"17. PARTS BONUS Company agrees to allow Distributor a bonus computed on the net amount of certain of his purchases of all classes of new parts referred to above (except tires and tubes) during each calendar year. "Net amount of certain of his purchases" shall mean the total of Company's billing prices to Distributor for the following parts, less any credits for returned purchases and shall not include transportation, labor or other miscellaneous charges:

- a. All such new parts (except tires and tubes) as are shipped to Distributor direct from one or more of the factories of the Company, direct from the factory which manufactured such parts, direct from the Los Angeles, California factory warehouse and, with respect to Freightliner parts, from the Company's Portland, Oregon branch; plus
- b. All such new parts (except tires and tubes) purchased from one or more regional or branch offices of the Company other than as provided in (a) above, to the extent the same shall not exceed 10% of the total annual direct purchases of all such parts (except tires and tubes) from the sources listed in (a) above.

The rate of such bonus shall be 1% where the net amount of said purchases is more than \$1,000 but not more than \$5,000, 2% where it is in excess of \$5,000 but not more than \$10,000, 3% where it is in excess of \$10,000 but not more than \$20,000, 4% where it is in excess of \$20,000 but not more than \$30,000, and 5% where it is in excess of \$30,000. Such bonus shall be payable as soon as practicable after the end of each calendar quarter and payments shall include the accumulated bonus based on all such purchases during the calendar year, less any bonus payments made previously for the calendar year; however, at Company's discretion no bonus accrued as of the end of each quarter shall be paid until Company has received full settlement in cash for all purchases included in the bonus computation."

This Amendment shall be effective as of January 1, 1959.

THE WHITE MOTOR COMPANY

Regional Vice President

Region

Approved

December 15, 1958

Director of Wholesale Operations

Executive Officer and Title

JOHN L. BOLTANO WHITE TRUCK SALES

Name of Distributor

By

John L. Boltano

2437

[fol. 2438]

DETACH AND RETURN

Co. *Petaluma* State *Calif* Date *Jan 1* 1958

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix C superseding all previous lists captioned Price List Appendix C as of March 1, 1958, the terms of which are accepted and agreed to.

Samuel C. Grother *John L. Barlano*
 (Witness) (Distributor)

2438

[fol, 2439]

D.S. - 1
2-58

Supplement to Distributor Selling Agreement between

THE WHITE MOTOR COMPANY

and

J. L. Boitard White Truck Sales

Dated January 2, 1958

It is agreed that the following conditions shall be applicable to the sale of Autocar trucks and Autocar parts by Distributor to any of his key dealers, metropolitan dealers or dealers under the subject Distributor Selling Agreement.

ARTICLE 9 - It is the intent of this supplement that the words "WHITE TRUCKS" and "WHITE PARTS" as they appear in this article shall also embrace "AUTOCAR" trucks and "AUTOCAR" parts.

ARTICLE 10 - The provisions of Article 10 with respect to wholesale overrides on chassis sales to key dealers shall be applicable to the sale of new Autocar trucks, and the wholesale override shall be the amount set forth in the latest issue of the applicable "Distributor Price List - Appendix C".

ARTICLE 23 - Notwithstanding the provisions of Article 23, this Supplement may also be cancelled by either party upon sixty (60) days written notice.

ARTICLE 29 - The duration of this supplement shall be the same as recited in this article, except that it may be cancelled as herein or in the agreement provided.

THE WHITE MOTOR COMPANY

[Signature]
Regional Vice President*[Signature]*
Region*[Signature]*
(Distributor)Approved: March 31 1958
DateBy *[Signature]*
(Title)*[Signature]*
Director Wholesale and Retail Operations*[Signature]*
Executive Officer and Title

Copies Received 4-9-58

DETACH AND RETURN

Cataluma *Belief*

Date 1-2

1958

Received from The White Motor Company, Cleveland, Ohio, dated 1-1-58, Post List A-1, is a copy of the
 copy made by registered Post List A-1, is a copy of the November 15, 1957, the terms of which are
 agreed and agreed to

Witness

John L. Butano
 Name of the person
John L. Butano

2440

[fol. 2441]

DETACH AND RETURN

City *Philadelphia* *Pa.*Date *1-2-*

Noted from The White Motor Company, Cleveland, Ohio, that under Price List Appendix C, Company, all prices are duly expressed Price List & Appendix C, dated 12-15-1915, the terms of which are agreed and agreed to

Witness

John S. Bartow
John S. Bartow

2441

DETACH AND RETURN	
<i>Petaluma</i> , State <i>California</i>	Date <i>1-2</i> 19 <i>57</i>
<p>Received from The White Motor Company, Cle- land Ohio Distributor Price List Appendix A (superseding all previous lists captioned Price List Appendix A) effective November 15, 1956 the terms of which are accepted and agreed to</p>	
<i>Samuel H. Lisch</i> <small>Buyer</small>	<i>John A. B. Trenchard</i> <small>Distributor</small> <i>John J. Britton</i> <small>By</small>

[Vol. 2443]

DETACH AND RETURN

City — Portland,

Received from The White Motor Company, Inc. the following copy of the Supplemental Agreement, together with all previous instructions and agreed to:

H. P. Shuler
Signature

ARTICLE 1 — It is the intent of this Supplement that the words "WHITE TRUCK" as they appear in the Distributor Selling Agreement also include "WHITE FREIGHTLINER" Trucks.

ARTICLE 2 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE FREIGHTLINER Trucks.

ARTICLE 5 — The point of delivery shall be Portland, Oregon.

ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 10 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 22 — This article shall include the name "WHITE FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 — The duration of this supplement shall be the same as that stated in this Agreement.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE FREIGHTLINER Trucks by the Distributor to the Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A:

Model	Standard Wheelbase	Price at Portland	Discount Allowed	Wholesale Overhead Surcharge to Key Dealers	Service and Profit Allowance to Key Dealers
WF42	114"	17,275.00	15 and 7 1/2%	None	200.00
WF64	134 1/2"	21,075.00	15 and 7 1/2%	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2%	None	275.00

THE WHITE MOTOR COMPANY

H. P. Shuler
Regional Manager
Approved: *H. P. Shuler*
Date: *April 1, 1955*

H. P. Shuler
Sales Manager — Wholesale Division
Executive Office and Title Secretary

John L. 14115, White Motor Co. 14115

H. P. Shuler
(Title)

3449

DETACH AND RETURN

City Petaluma,State CaliforniaDate 3/1 1957

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix B superseding all previous ones. Approved by the Board of Directors January 1, 1957, the terms of which are accepted and agreed to.

A. P. Shethan
Witness

JOHN L. BOIANO WHITE TRUCK SALES
Name of Distributor

John L. Boiano

ARTICLE 1 — It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE-FREIGHTLINER" Trucks.

ARTICLE 3 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 5 — The point of delivery shall be Portland, Oregon.

ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 10 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 22 — This article shall include the names "WHITE-FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 — The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE-FREIGHTLINER Trucks by the Distributor to his Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE-FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Overhead Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42	114"	17,275.00	15 and 7 1/2 %	None	200.00
WF64	194 1/2 "	21,075.00	15 and 7 1/2 %	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2 %	None	275.00

THE WHITE-MOTOR COMPANY

John L. Boiano
Regional Manager
Approved: March 7, 1957
Date

John L. Boiano
Sales Manager — Wholesale Division
Executive Officer and Title

JOHN L. BOIANO WHITE TRUCK SALES

(Distributor)
By *John L. Boiano*
(Title)

2450

[fol. 2445]

SUPPLEMENT TO DISTRIBUTOR SELLING AGREEMENT BETWEEN

THE WHITE MOTOR COMPANY

AND

JOHN L. BOITANO WHITE TRUCK SALES

DATED January 1, 1955

is agreed that the following conditions shall be applicable to the purchase and sale of White-Freightliner trucks under the subject Distributor Selling Agreement:

ARTICLE 1 -- It is the intent of this supplement that the words "WHITE AND AUTOCAR TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE-FREIGHTLINER" Trucks.

ARTICLE 3 -- The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 5 -- The point of delivery shall be Portland, Oregon.

ARTICLE 7 -- This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 8 -- This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 10 -- This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 22 -- This article shall include the names "WHITE-FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 -- The duration of this supplement shall be the same as that recited in this Article.

PRICE LIST -- APPENDIX A: The following price revisions and additions shall be considered as having been made to Distributor Price List -- Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Override Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42T	115 1/2"	19,050.00	28%	None	200.00
WF64	196"	23,630.00	28%	None	275.00
WF64T	155"	23,365.00	28%	None	275.00
WF5842T	115 1/2"	19,085.00	28%	None	200.00
WF5844T	115 1/2"	22,175.00	28%	None	200.00
WF6542T	115 1/2"	18,740.00	28%	None	200.00
WF6564	196"	23,320.00	28%	None	275.00
WF7564T	156"	23,090.00	28%	None	275.00

THE WHITE MOTOR COMPANY

Regional Manager Pacific Coast Region

Approved: December 26, 1955 Date

Sales Manager - Wholesale Division

Executive Officer and Title Secretary

JOHN L. BOITANO WHITE TRUCK SALES

By John L. Boitano (Title)

2445

[fol. 2446]

DETACH AND RETURN

Freightliner *Self* *Apr 2* 1946
 Received from The White Motor Company, Cincinnati, Ohio, a copy of the Supplement to the Distributor Selling Agreement, dated April 2, 1946, and the same is hereby acknowledged. This Supplement is hereby accepted and agreed to.

Phelps
 Witness

John L. Holland White Truck Sales
J. L. Holland
 Sales Manager

ARTICLE 1 — It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE FREIGHTLINER" Trucks.

ARTICLE 3 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE FREIGHTLINER Trucks.

ARTICLE 5 — The point of delivery shall be Portland, Oregon.

ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 10 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 22 — This article shall include the names "WHITE FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 — The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE FREIGHTLINER Trucks by the Distributor to his Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Charge Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42	114"	17,275.00	15 and 7 1/2 %	None	200.00
WF64	194 1/4"	21,075.00	15 and 7 1/2 %	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2 %	None	275.00

THE WHITE MOTOR COMPANY

Phelps Pacific Coast Region
 Regional Manager

Approved: *April 7, 1946* Date

no Phelps
 Sales Manager — Western Division

Paul H. ... Secretary
 Executive Office and Vice

JOHN L. HOLLAND WHITE TRUCK SALES

By *John L. Holland*
 (Type)

2446

[fol. 2447]

DETACH AND RETURN

Albion *July* *1947*

Mr. J. L. Miller

1010 1/2 S. Main St.

Portland, Ore.

J. L. Miller

- ARTICLE 1 It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE FREIGHTLINER" Trucks.
- ARTICLE 3 The provisions of Article 3 with respect to adjustment on vehicle deliveries shall be applicable to the sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 5 The point of delivery shall be Portland, Oregon.
- ARTICLE 7 This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 8 This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 10 This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 22 This article shall include the name "WHITE FREIGHTLINER" and "FREIGHTLINER."
- ARTICLE 29 The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES -- DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE FREIGHTLINER Trucks by the Distributor to his key dealers and Dealers shall be at current list prices as shown in the latest WHITE FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST -- APPENDIX A The following additions shall be considered as having been made to Distributor Price List, Appendix A.

Model	Standard White Truck	Price at Portland	Discount	Where no Complete Sales to Key Dealers	Where no Complete Sales to Key Dealers
WF42	114"	17,275.00	15 and 7 1/2 %	None	200.00
WF64	194 1/2"	21,075.00	15 and 7 1/2 %	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2 %	None	275.00

THE WHITE MOTOR COMPANY

Approved *July 17, 1947*

Regional Manager

Approved *July 17, 1947*

Sales Manager - Wholesale Division

Executive Office and Title

Pacific Coast

JOHN L. MILLER, WHITE TRUCK SALES

By *J. L. Miller*

(Title)

2447

[fol. 2448]

DETACH AND RETURN

C. *Pit Lane* State *Calif* Date *Apr 2* 1956

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix C effective December 1, 1955, the terms of which are accepted and agreed to.

John L. Bortone
Witness

John L. Bortone
Name of Distributor

J. L. Bortone

ARTICLE 1 — It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE-FREIGHTLINER" Trucks.

ARTICLE 3 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 5 — The point of delivery shall be Portland, Oregon.

ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.

ARTICLE 10³ — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 22 — This article shall include the names "WHITE-FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 — The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE-FREIGHTLINER Trucks by the Distributor to his Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE-FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Override Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42	114"	17,775.00	15 and 7 1/2 %	None	200.00
WF54	134 1/2"	21,075.00	15 and 7 1/2 %	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2 %	None	275.00

THE WHITE MOTOR COMPANY

John L. Bortone Pacific Coast Region
Regional Manager
Approved: *May 7 1955* Date
no signature
Sales Manager — Wholesale Division
Frank J. ... Secretary
Executive Offices and Title

JOHN L. BORTONE WHITE TRUCK SALES

By *John L. Bortone*
(Signature)
(Title)

2448

[fol. 2449]

DETACH AND RETURN

City Petaluma State Calif Date 1-2-57 1957

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix B superseding all previous Price Lists. Appendix B effective November 18, 1956, the terms of which are accepted and agreed to.

Ernest L. Gruber
Witness

John L. Burton White Motor Co.
Distributor
By John L. Burton

2443

[fol. 2450]

DETACH AND RETURN		
City <u>Petaluma</u>	State <u>California</u>	Date <u>1-3-57</u>
Received from The White Motor Company, Cleveland, Ohio, Distributor Price List Appendix C (superseding all previous Price Lists captioned Price List Appendix C) effective November 15, 1956, the terms of which are accepted and agreed to		
<u>Frank A. Smith</u> Witness	<u>John L. Batens</u> Sales Representative	
	By <u>John L. Batens</u>	

2444

[fol. 2451]

DETACH AND RETURN

City Petaluma, State California Date 3/1/55

Received from The White Motor Company, Cleveland, Ohio, Distributor Price List, Appendix A, dated January 1, 1955, the terms of which are hereby agreed to.

H. P. Stetler
WitnessJOHN L. BOITANO WHITE TRUCK SALES
Name of Distributor*John L. Boitano*

- ARTICLE 1 — It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE FREIGHTLINER" Trucks.
- ARTICLE 3 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 5 — The point of delivery shall be Portland, Oregon.
- ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 10 — This article shall not apply to the purchase and sale of WHITE FREIGHTLINER Trucks.
- ARTICLE 22 — This article shall include the names "WHITE-FREIGHTLINER" and "FREIGHTLINER."
- ARTICLE 29 — The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE FREIGHTLINER Trucks by the Distributor to his Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Override Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42	114"	17,275.00	15 and 7 1/2 %	None	200.00
WF64	194 1/2"	21,075.00	15 and 7 1/2 %	None	275.00
WF64T	154"	22,000.00	15 and 7 1/2 %	None	275.00

THE WHITE MOTOR COMPANY

Pacific Coast Region

JOHN L. BOITANO WHITE TRUCK SALES

Regional Manager

Approved

April 7, 1955

Region

Date

By

(Distributor)

(Title)

Sales Manager — Wholesale Division

Frank H. Davis Secretary
Executive Officer and Title

2451

SUPPLEMENT TO DISTRIBUTOR SELLING AGREEMENT BETWEEN

THE WHITE MOTOR COMPANY

AND

JOHN L. BOITANO WHITE TRUCK SALES

DATED January 1, 1955

It is agreed that the following conditions shall be applicable to the purchase and sale, of White-Freightliner trucks under the subject Distributor Selling Agreement:

ARTICLE 1 — It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Distributor Selling Agreement also embrace "WHITE-FREIGHTLINER" Trucks.

ARTICLE 3 — The provisions of Article 3 with respect to adjustment on outside deliveries shall be applicable to the sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 5 — The point of delivery shall be Portland, Oregon.

ARTICLE 7 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 8 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 10 — This article shall not apply to the purchase and sale of WHITE-FREIGHTLINER Trucks.

ARTICLE 22 — This article shall include the names "WHITE-FREIGHTLINER" and "FREIGHTLINER."

ARTICLE 29 — The duration of this supplement shall be the same as that recited in this Article.

SELLING PRICES — DISTRIBUTOR TO KEY DEALERS AND DEALERS

The sale price of WHITE-FREIGHTLINER Trucks by the Distributor to his Key Dealers and Dealers shall be at current list prices as shown in the latest WHITE-FREIGHTLINER price book less a discount of 15% and 5%.

PRICE LIST — APPENDIX A: The following additions shall be considered as having been made to Distributor Price List — Appendix A.

Model	Standard Wheelbase	Price at Portland	Distributor Discount	Wholesale Override Sales to Key Dealers	Service and Handling Allowance Sales to National Accounts
WF42	114"	17,275 00	15 and 7 1/2 %	None	200 00
WF64	194 1/2"	21,075 00	15 and 7 1/2 %	None	275 00
WF64T	154"	22,000 00	15 and 7 1/2 %	None	275 00

THE WHITE MOTOR COMPANY

Regional Manager

Pacific Coast Region

Approved:

March 7, 1955
Date

Sales Manager — Wholesale Division

Executive Officer and Title

JOHN L. BOITANO WHITE TRUCK SALES

(Distributor)

By

John L. Boitano
(Title)

[fol. 2453]

CONTRACT CHECK SHEET

☒ Distributor☐ DealerFirm Name John L. Boitano White Truck SalesStreet No. 1 Bridge Street Town Escaluna State California

	Yes	No
1. Contract Properly Signed and Attached <small>(Triplicate - Distributor) (Quaduplicate - Dealer)</small>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Price List Appendix "A" <small>NEW and OLD</small> Enclosed (Acknowledgment Signed)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Financial Statement in Duplicate (Attached)	<input type="checkbox"/>	<input type="checkbox"/>
4. Credit Agency Report (Attached)	<input type="checkbox"/>	<input type="checkbox"/>
5. Photo of Credit Investigation (Attached) <small>(Indicate Floor Plan, Time Sales, Parts Limits, etc.)</small>	<input type="checkbox"/>	<input type="checkbox"/>
6. Initial Truck Order - Number Ordered ()	<input type="checkbox"/>	<input type="checkbox"/>
7. Initial Parts Order - Amount Ordered (\$)	<input type="checkbox"/>	<input type="checkbox"/>
8. Sales Help Order (Attached) <small>*Credit Manager Will Attach x Not Necessary in Case of Dealer</small>	<input type="checkbox"/>	<input type="checkbox"/>

9. Active General Manager John L. Boitano10. Individual? ☒ Partnership? ☐ Corporation? ☐11. Name of Owner, Partners, or Officers and Titles: John L. Boitano, owner.12. Is Building Adequate? Yes Sales Room? Yes Service Dept.? Yes Parts Dept.? Yes
Accessory Dept.? Yes Other Lines of Merchandise Handled Reliance trailers.13. Sq. Ft. Available for Truck Service? 6,000 square feet.14. No. Owners in Truck Owner File 15. Total No. Truck Salesmen Agreed Upon? None No. Now Employed? 016. No. Truck Mechanics Agreed Upon? 5 No. Now Employed? 517. Experienced in Truck Business? Yes 18. Makes Previously Sold? 19. Firm Phone No. 2-1008 20. Has Classified Listing in Telephone Directory
Under "White Sales & Service" been arranged? Yes21. Dealers Agreed Upon in Following Towns: (Escaluna)

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Direct Key Dealer
SELLING AGREEMENT

WHITE MACHINE WORKS
DIRECT KEY DEALER

1024 Valley Road

NUMBER

Mapa, California

ITY

STATE

The White Motor Company
Cleveland 1, Ohio

27-2

[Vol. 2804]

This agreement made in quadruplicate this 16th day of July, 1956 by and between The White Motor Company, Cleveland, Ohio, hereinafter called "Company," and

REXALL MACHINE WORKS

As Individual of Napa, Napa, California
Company of City County State
 A. Company

hereinafter called "Direct Key Dealer," witnesseth:

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

SELLING PRIVILEGE AND TERRITORY:

Direct Key Dealer is hereby granted the exclusive right, except as hereinafter provided, to sell, during the life of this agreement, in the territory described below, White trucks purchased from Company hereunder.

City of Napa - except the sale of fire truck chassis to the State of California and
 (Description of territory)
 all political subdivisions thereof.

MERCHANDISING AGREEMENT

Direct Key Dealer agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

Direct Key Dealer agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, nor to sell such trucks to any Federal or State government or any department, or political subdivision thereof, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct dealers and distributor's key dealers and dealers are excepted throughout this paragraph.) Direct Key Dealer further agrees to maintain a sales room and service station adequate for the sale and servicing of White trucks in said territory and to purchase and display conspicuously about his place of business the authorized White sales and service signs.

ADJUSTMENT ON OUTSIDE DELIVERIES

Direct Key Dealer agrees that should any new White Truck sold and delivered by him, be first registered and/or placed in initial service within the territory of another of Company's distributors, direct key dealers or direct dealers, to pay to such other distributor, direct key dealer or direct dealer an adjustment on each such truck, provided he shall have received from such other distributor, direct key dealer or direct dealer written notice of claim for adjustment within sixty (60) days after date of delivery into the other distributor's, direct key dealer's or direct dealer's territory, the amount of such adjustment to be that specified in the latest issue of the applicable Direct Key Dealer's Price List—Appendix A, or "Price List—Appendix B."

STOCKING NEW TRUCKS

Direct Key Dealer agrees to purchase and keep on display at all times a representative stock of White trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. Company, however, will not ship any chassis to Direct Key Dealer except on Direct Key Dealer's specific order.

PRICES, DISCOUNTS AND TERMS

Company agrees to sell to Direct Key Dealer at Company's factory at Cleveland, Ohio, new White truck standard chassis including standard equipment and a reservoir mounted thereon, for cash in full at the respective prices and subject to the discounts, terms and provisions set forth in or at the Direct Key Dealer net prices and subject to the terms and provisions set forth in Direct Key Dealer's Price List—Appendix A, "Price List—Appendix B," and the latest issue of Company's sales handbook, all of which are subject to change without advance notice. The "Price List—Appendix A," and "Price List—Appendix B," will be issued by Company from time to time and the latest issue thereof shall become and be a part of this agreement. Net prices will be increased by a flat charge to cover delivery costs from Cleveland, Ohio, to point of delivery, by the amount of manufacturers preparation charge as shown in price lists, and by all sales gross receipts, consumption, excise and any and all special taxes of whatever kind levied on the trucks sold and in effect as of date of delivery, or in any way collectible or payable by Company with respect thereto. Company agrees to furnish Direct Key Dealer itemized invoices for all chassis and equipment purchased hereunder, such invoices to show separately the selling prices of the chassis, bodies, lights, and equipment.

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PRICE PROTECTION

Should Company receive notice of a price reduction on any of the items listed in the Direct Key Dealer's order, the dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

Direct Key Dealer

Should Company receive notice of a price reduction on any of the items listed in the Direct Key Dealer's order, the dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

The production by the dealer of a new price list shall be required. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

ADVERTISING ACCOUNT

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

RETAIL DELIVERY REPORT

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

SALES UNACCEPTABLE TO DIRECT KEY DEALER

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

NATIONAL ACCOUNT AND GOVERNMENT SALES

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

PARTS SALES TO NATIONAL AND FLEET ACCOUNTS

The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction. The dealer shall be notified by the Company within 60 days after the date of the price reduction.

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[fol. 2806]

accessories to properly service White trucks operating in Direct Key Dealers territory, the quantity to be determined by mutual agreement. Direct Key Dealer further agrees not to sell or use in the repair of White trucks, parts not manufactured, engineered or approved by Company.

RETURN OF PARTS

Direct Key Dealer may return White parts to Company on these conditions, however: that they were purchased from Company; that they are new, unused, current and in good condition; that Direct Key Dealer has submitted to Company a list of such parts he desires to return, that Company shall, as promptly as possible, notify Direct Key Dealer as to the parts on said list, if any, which Company will accept; that transportation charges be prepaid on the return of such parts; that Direct Key Dealer shall have complied with the requirements of Company in maintaining a stock of parts, and that in the return of any such goods Direct Key Dealer shall fully comply with all Bulk Sales and other laws applicable thereto. Company shall accept those parts meeting the above conditions and credit the Direct Key Dealer with an amount equal to Direct Key Dealer's net cost, adjusted on the then current prices of such parts but less a charge of 7% to cover the Company's cost of handling. Those parts not meeting the above conditions will be held by Company for fifteen (15) days subject to Direct Key Dealer's order for disposition. Upon failure of Direct Key Dealer to order disposition within that time, Company may make such disposition thereof as it sees fit without liability to Direct Key Dealer for payment in any amount whatsoever.

NON-STANDARD ORDERS

No order accepted by Company for products not manufactured by Company or not of standard specifications shall be subject to cancellation or return by Direct Key Dealer without Company's express consent.

WARRANTY

New White trucks purchased hereunder are subject to the standard warranty of Company set forth in "Price List—Appendix A," and "Price List—Appendix B," and no other warranty or guaranty, express or implied by law or otherwise, is authorized or shall apply to the same.

DIRECT KEY DEALER**NOT COMPANY'S AGENT**

It is not the intent that Direct Key Dealer possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to the products of Company, other than contained in the standard warranty of Company.

USE OF NAME

The exclusive right to and use of, and the good will attached to, the marks and words "White," "White Motor," "White Sales," and "White Service" and any combination thereof, with reference to motor vehicles and parts and accessories thereof, are reserved to Company and Direct Key Dealer agrees that he will, upon termination of this agreement or at any time upon demand of Company, discontinue, cease and desist from the use and/or display of these words.

RIGHT OF CANCELLATION

This agreement and any renewal or extension thereof may be cancelled and terminated as below provided:

- (a) By mutual consent the parties hereto may at any time cancel and terminate this agreement forthwith.
- (b) Either party hereto, except as provided in paragraphs (c) and (d) below, may cancel and terminate this agreement by giving the other party sixty (60) days written notice of intention so to cancel.
- (c) In the event this agreement is the first White Selling Agreement entered into between Company and Direct Key Dealer, and if Direct Key Dealer, since the effective date of this agreement, shall have been actively engaged in the merchandising of the Company's products in accordance with the terms, conditions and provisions of this agreement, the Company agrees that it will not exercise its right to cancel and terminate this agreement, pursuant to the provisions of paragraph (b) above, at any time during the first twelve (12) months period following the effective date of this agreement.
- (d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Company may, at its option, cancel and terminate this agreement at any time without any notice whatsoever to Direct Key Dealer in case Direct Key Dealer is a co-partnership or a corporation and disagreements of any nature shall arise between members of the co-partnership or the officers, stockholders or managers of the corporation whereby Company deems its interests may be imperiled; or in case of the incapacity, death or insolvency of Direct Key Dealer; or in case an application is made to have Direct Key Dealer declared bankrupt; or in case a receiver or trustee is appointed for Direct Key Dealer; or in case Direct Key Dealer makes an assignment for the benefit of creditors; or in case of breach of this agreement on the part of Direct Key Dealer; or in case Direct Key Dealer or any of its officers or managers shall be convicted under any criminal laws (either State or Federal); or in case Direct Key Dealer or any of its officers or managers shall convert any property or embezzle any money either of third parties, or of Direct Key Dealer in the case of officers or managers; or in case Direct Key Dealer fails to secure a dealer's license or a renewal thereof in those states requiring dealers' licenses.

TERMINATION OF AGREEMENT

Cancellation or termination of this agreement will not release Direct Key Dealer from payment of any sum then owing to Company, nor from payment for trucks or equipment for same or parts ordered by Direct Key Dealer and not delivered to him prior to termination of notice of cancellation.

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RIGHT TO REPURCHASE

Upon termination of this agreement by Company, Company agrees, (except with respect to the products referred to in article captioned "Non Standard Orders"), to purchase from Direct Key Dealer and Direct Key Dealer agrees to sell to Company within twenty (20) days after such termination:

- (a) All new and unused White truck chassis in good condition then owned by Direct Key Dealer and purchased by him from Company during the six (6) months next preceding Company's notice of cancellation at Direct Key Dealer's net cost including transportation charges paid to Company.
- (b) All parts and accessories then owned by Direct Key Dealer which in Company's opinion are new, unused, undamaged and in marketable condition at time and place of acceptance by Company and which were purchased by Direct Key Dealer from Company for use on White chassis erected within a five year period next preceding Company's notice of cancellation, at Direct Key Dealer's net cost (adjusted on the then current prices of such parts), exclusive of transportation charges, and less a charge of 2% to cover Company's expense of handling.

Upon cancellation and termination of this agreement by Direct Key Dealer, or by natural expiration, or by mutual consent of the parties hereto, Company shall have the right and option to repurchase from Direct Key Dealer within twenty (20) days after the effective date of such cancellation and termination, any or all White truck chassis and parts then owned by Direct Key Dealer, at the same prices specified in paragraphs (a) and (b) next preceding.

PERFORMANCE OF AGREEMENT

It is understood and agreed that performance of this agreement by Company and the fulfillment of orders accepted hereunder are subject to strikes, accidents, fire, delays of transportation, commandeering of Company's factory and delays of subcontractors due to such causes, and also to requirements of and orders accepted by Company from duly constituted public authorities and other contingencies beyond Company's control, and that Company shall have the full right at its discretion to reject, wholly or in part any order or specification for goods from Direct Key Dealer. In no case shall Company be liable for damage or loss sustained by Direct Key Dealer because of failure to deliver on or before stipulated delivery date. It is further understood and agreed that full performance of this agreement by Direct Key Dealer is a condition precedent to performance thereof by Company, and that any failure by Company to enforce or to require performance by Direct Key Dealer of any provision of this agreement or to exercise any option herein granted, shall in no way affect the validity of this agreement or impair the right of Company later on to enforce any such provision or exercise any such option. //

ENTIRETY

All negotiations, correspondence and memoranda passing between the parties hereto with reference to the subject matter of this agreement are merged in this agreement, which cancels and supercedes all prior agreements between the parties hereto and constitutes the entire and only agreement between them with reference to said subject matter. This agreement may be altered, modified, or abridged only by written instrument duly executed by an Executive Officer of Company at Cleveland, Ohio, and no transfer of same or of any claim arising hereunder may or can be made without written consent from Company.

SEPARABILITY

It is intended that this agreement shall not be in unlawful violation of any valid applicable laws now or hereafter from time to time in effect in any country, state or jurisdiction and that should any provision herein in anywise contravene said laws, this agreement shall be considered divisible as to such provision and the remainder of the agreement valid and binding as though such provision were not included therein.

DURATION OF AGREEMENT

Company shall not be bound on this agreement until it shall have been approved by an Executive Officer of Company. It shall then be effective on and as of the 1st day of April

1956 and continue in effect, subject to the right of cancellation set forth above, until the end of the calendar year then current. Continuation of regular dealings between the parties hereto after the end of such calendar year shall extend this agreement for the next succeeding calendar year, and so on from year to year, subject always to the right of cancellation set forth above.

THE WHITE MOTOR COMPANY

[Signature] Regional Manager
[Signature] Region

Approved

[Signature] October 8, 1956
[Signature] Sales Manager - Wholesale Division

Executive Officer and Title

By REGALLA MACHINE WORKS

Name of Direct Key Dealer

*[Signature]***INSTRUCTIONS**

If Direct Key Dealer is:
 INDIVIDUAL - Sign his personal name only
 INDIVIDUAL OPERATING UNDER TRADE NAME - Sign trade name and Direct Key Dealer should sign personal name underneath.
 PARTNERSHIP - Sign partnership name and all partners should sign underneath.
 CORPORATION - Sign corporate name and underneath a signature of authorized officer (President, Secretary, Treasurer) with designation of title.

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[fol. 2808]

DETACH AND RETURN			
City <i>Napa</i>	State <i>Calif.</i>	Date <i>Mar 21</i>	1958
Received from The White Motor Company, Cleveland, Ohio, Direct Key Dealer Price List Appendix A (superseding all previous lists) effective January 10, 1958, the terms of which are accepted and agreed to			
Witness		By <i>Ryalia Moshenko</i> <i>E. L. Ryalia</i> Direct Key Dealer	

DETACH AND RETURN			
City <i>Napa</i>	State <i>Calif.</i>	Date <i>Mar 21</i>	1958
Received from The White Motor Company, Cleveland, Ohio, Direct Key Dealer Price List Appendix B (superseding all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to			
Witness		By <i>Ryalia Moshenko</i> <i>E. L. Ryalia</i> Direct Key Dealer	

DETACH AND RETURN			
City <i>Napa</i>	State <i>Calif.</i>	Date <i>Mar 21</i>	1958
Received from The White Motor Company, Cleveland, Ohio, Direct Key Dealer Price List Appendix C effective February 1, 1958, the terms of which are accepted and agreed to			
Witness		By <i>Ryalia Moshenko</i> <i>E. L. Ryalia</i> Direct Key Dealer	

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[fol. 2809]

D.K.D.S. - 1

Supplement to Direct Key Dealer Selling Agreement
between

THE WHITE MOTOR COMPANY

and

Carl L. Rogolia
Direct Key Dealer

Dated

19 *58*

It is agreed that the following conditions shall be applicable to the purchase and sale of Autocar trucks and Autocar parts under the subject Direct Key Dealer Selling Agreement:

SELLING PRIVILEGE
AND TERRITORY:

It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Direct Key Dealer Selling Agreement also embrace "AUTOCAR" trucks.

ADJUSTMENT ON
OUTSIDE DELIVERIES:

The provisions of this article with respect to adjustments on outside deliveries shall be applicable to the sale of AUTOCAR trucks, and the adjustment shall be the amount set forth in the latest issue of the applicable "Direct Key Dealer Price List--Appendix C".

PRICES, DISCOUNTS
AND TERMS:

The point of delivery shall be Exton, Pennsylvania, and the prices, discounts and terms shall be as set forth in the latest issue of the applicable "Direct Key Dealer Price List--Appendix C". The said Direct Key Dealer Selling Agreement and this supplement shall cover only such models of AUTOCAR trucks as are set forth in the latest issue of the applicable "Direct Key Dealer Price List--Appendix C".

ADVERTISING
ACCOUNT:

The provisions of this article shall apply to the purchase of AUTOCAR trucks.

SALES UNACCEPTABLE
TO DIRECT KEY DEALER:

The provisions of this article shall apply to the sale of AUTOCAR trucks.

SERVICE AND
HANDLING ALLOWANCE
ON NATIONAL ACCOUNTS:

The provisions of this article shall apply to the sale of AUTOCAR trucks. The service and handling allowance on sales of AUTOCAR trucks to National Accounts shall be as set forth in the latest issue of the applicable "Direct Key Dealer Price List--Appendix C".

PARTS SALES
AND DISCOUNTS:

It is the intent of this supplement that the words "WHITE Parts and Accessories" as they appear in this article of the Direct Key Dealer Selling Agreement also embrace "AUTOCAR" parts and accessories. "AUTOCAR" parts sales and discounts shall be those outlined in the latest issue of the applicable "Direct Key Dealer Price List--Appendix C".

[fol. 2810]

WHOLESALE APPOINTMENT NOTICE

10/10/56

Region Pacific Coast (94) Branch San Francisco Type of Contract Direct Key Dealer
 Firm Name Regalia Machine Works Contract Effective 4-1-56
 Address 1024 Vallejo Road St. Napa City California State
 Owner P. O. Box 97 E. L. Regalia

Exceptions to Standard Agreement

✓	COPIES	✓	REMARKS TO DEPARTMENTS
	Advertising Dept.		C. I. T.
	Branch Accounting Dept.		G. C. Frank
	Credit Dept.		E. F. Beate
	Field Service Dept.		G. W. Williams
	Printing Dept.		W. L. Papia
	Service Sales Division		Geo. H. Scruggs
	Mailing Dept.		
	Traffic Dept.		
	Sales Training Dept.		

PLEASE NOTE: The above account has been recontracted as a Direct Key Dealer.

Formerly a Key Dealer under: Oakland White Truck Sales - Oakland, California

ALSO NOTE: P. O. Box #

DETACH AND RETURN

City Napa State California Date 7-16 19 56

Received from The White Motor Company, Cleveland, Ohio, Direct Key Dealer Price List Appendix A
 effective November 15, 1955, the terms of which are accepted and agreed to

Witness

REGALIA MACHINE WORKS

Direct Key Dealer

E. L. Regalia
 P. O. Box 97

DETACH AND RETURN

City Napa State California Date 7-16 19 56

Received from The White Motor Company, Cleveland, Ohio, Direct Key Dealer Price List Appendix B
 effective November 15, 1955, the terms of which are accepted and agreed to

Witness

REGALIA MACHINE WORKS

Direct Key Dealer

E. L. Regalia
 P. O. Box 97

[fol. 2845]

PLAINTIFF'S EXHIBIT (EDGERTON) 21



Direct Dealer
SELLING AGREEMENT

THIS AGREEMENT IS MADE THIS _____ DAY OF _____ 19____
BETWEEN _____ DIRECT DEALER

THE WHITE MOTOR COMPANY
NUMBER _____

STREET _____

CLEVELAND, OHIO
CITY _____

STATE _____

The White Motor Company
Cleveland 1, Ohio

[Vol. 2846]

This agreement made in quadruplicate this 1st day of January, 1955, by and between The White Motor Company, Cleveland, Ohio, hereinafter called "Company," and

Harold Anderson, a single male, of Illinois, residing at _____, _____, _____, Minnesota, hereinafter called "Direct Dealer," witnesseth:

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:
SELLING PRIVILEGE AND TERRITORY: Direct Dealer is hereby granted the exclusive right, except as hereinafter provided, to sell, during the life of this agreement, in the territory described below, White trucks purchased from Company hereunder.

In the counties of Kaskaskia and Peoria in the State of Illinois
(Description of Territory)

MERCHANDISING AGREEMENT Direct Dealer agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

Direct Dealer agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, nor to sell such trucks to any Federal or State government or any department, or political subdivision thereof, unless the right to do is specially granted by Company in writing. (Company Distributors, Company approved distributors, direct dealers and distributor's key dealers and dealers are excepted throughout this paragraph.) Direct Dealer further agrees to maintain a sales room and service station adequate for the sale and servicing of White trucks in said territory and to purchase and display conspicuously about his place of business the authorized White sales and service sign.

ADJUSTMENT ON OUTSIDE DELIVERIES Direct Dealer agrees that should any new White truck sold and delivered by him be first registered and or placed in initial service within the territory of another of Company's distributors, direct key dealers or direct dealers, to pay to such other distributor, direct key dealer or direct dealer an adjustment on each such truck, provided he shall have received from such other distributor, direct key dealer or direct dealer written notice of claim for adjustment within sixty (60) days after date of delivery into the other distributor's, direct key dealer's or direct dealer's territory, the amount of such adjustment to be that specified in the latest issue of the applicable Direct Dealer "Price List—Appendix A," or "Price List—Appendix B."

STOCKING NEW TRUCKS Direct Dealer agrees to purchase and keep on display at all times a representative stock of White trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. Company, however, will not ship any chassis to Direct Dealer except on Direct Dealer's specific order.

PRICES, DISCOUNTS AND TERMS Company agrees to sell to Direct Dealer at Company's factory at Cleveland, Ohio, new White truck standard chassis, including standard equipment and accessories mounted thereon, for cash in full at the respective prices and subject to the discounts, terms and provisions or at the Direct Dealer net prices and subject to the terms and provisions set forth in Direct Dealer "Price List—Appendix A," "Price List—Appendix B," and the latest issue of Company's Sales Handbook, all of which are subject to change without advance notice. The "Price List—Appendix A," and "Price List—Appendix B" will be issued by Company from time to time and the latest issue thereof shall become a part of this agreement. Net prices will be increased by a flat charge to cover delivery costs from Cleveland, Ohio, to point of delivery, by the amount of manufacturer's preparation charge as shown in price lists, and by all sales, gross receipts, consumption, excise and any and all special taxes of whatever kind levied on the trucks so sold and in effect as of date of delivery, or in any way collectible or payable by Company with respect thereto. Company agrees to furnish Direct Dealer itemized invoices for all chassis and equipment purchased hereunder, such invoices showing separately the selling prices of the chassis, bodies, cabs, and equipment.

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[fol. 2847]

PRICE PROTECTION

In the event Company reduces the price of any truck which is in the stock of Direct Dealer and a new chassis and unbuild, and was purchased by Direct Dealer from Company during the preceding month and preceding month, Company shall refund or credit to Direct Dealer the difference between the price paid by Direct Dealer to Company and the price he would have paid after such reduction, provided, however, where claim for such refund or credit is supported by evidence satisfactory to Company, is received by it from Direct Dealer within twenty (20) days after the effective date of such price reduction. In case of trucks purchased by Direct Dealer under a lease contract or similar instrument, Company reserves the right to pay such difference in price to the holder thereof instead of to the Direct Dealer.

Should Company increase the prices on any of its current truck models, Direct Dealer may, within five (5) days from receipt of notice of such increase, cancel all unshipped orders previously placed by him for trucks affected by the change, excepting orders as referred to below in Article captioned "Non Standard Orders."

The production by Company of a new truck model or series of models, different from any previously sold to Direct Dealer, regardless of price, shall not constitute a change in price within the meaning of this provision.

ADVERTISING ACCOUNT

Direct Dealer agrees to pay in addition to all other charges, the sum of \$15.00 for each White truck purchased hereunder. To this fund Company shall also contribute the sum of \$7.50 for each truck sold or leased. The contained fund shall be administered by Company to cover the cost of such advertising as may be incurred in the judgment of Company will most effectively stimulate or promote the sale of White products. Upon termination of this agreement, the unspent portion of Direct Dealer's payments into said fund shall be returned or credited to him.

RETAIL DELIVERY REPORT

Direct Dealer agrees to provide Company with a "Retail Delivery Report" in form supplied by Company, said report to be completely and accurately filled in and mailed to Company within five (5) days following the date of delivery of each new White truck by Direct Dealer to a retail purchaser.

SALES UNACCEPTABLE TO DIRECT DEALER

In the event Direct Dealer has an opportunity to sell a White truck on terms and conditions unacceptable to him, Company, upon being so notified by Direct Dealer, may itself handle such sale direct and compensate Direct Dealer as may be mutually agreed upon, it being understood and agreed that in all such cases all rights and claims of Direct Dealer to discount, service and handling allowance or otherwise will be automatically waived and released.

NATIONAL ACCOUNT AND GOVERNMENT SALES

Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a "National Account," as well as to the Federal, State or any State Government or any department or political subdivision thereof, without any obligation whatever on the part of Company to Direct Dealer except as set out hereinafter provided.

SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS

In the event Company sells any new White truck direct on and "Price List—Appendix A" or "Price List—Appendix B," direct to an individual, firm or corporation designated by Company as a "National Account" (which classification does not include the Federal, State Government or any department or political subdivision thereof) and such truck is first registered and/or placed in initial service within the above described territory, Company, agreed upon the conditions below stated, to pay to Direct Dealer on each new truck delivered an amount which shall be called "Service and Handling Allowance." The amount of the Service and Handling Allowance shall be that determined for each model of new White truck listed on "Price List—Appendix A" or "Price List—Appendix B." It being understood that such direct deliveries are subject to no further discount or commission or otherwise. Such "Service and Handling Allowance" shall be paid to Direct Dealer in cash or credited to his account as Company may elect, provided that Direct Dealer agrees to cooperate with Company in developing such national account business to the fullest extent that in each case Direct Dealer shall have established local contact with the customers to whom such deliveries are made and/or shall have performed all functions of delivery, conditioning, approval or to the satisfaction of Company, and that written claim for such allowance shall be filed with Company within thirty (30) days after the delivery of such chassis into Direct Dealer's territory.

PARTS SALES TO NATIONAL AND FLEET ACCOUNTS

Direct Dealer agrees to extend to firms and corporations, and subdivisions of the latter designated by Company as "National Accounts" or "Fleet Accounts," and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed them by Company.

PARTS SALES AND DISCOUNTS

Company will sell to Direct Dealer new White parts and accessories listed in Company's latest retail parts book at the prices and discounts and on the terms and conditions, as provided in the aforementioned parts book. Direct Dealer agrees to purchase from Company and maintain at all times an adequate stock of new White truck parts and accessories to

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[fol. 2848]

properly service White trucks operating in Direct Dealer's territory; the quantity to be determined by mutual agreement. Direct Dealer further agrees not to sell or use in the repair of White trucks, parts not manufactured, engineered or approved by Company.

RETURN OF PARTS Direct Dealer may return White parts to Company on these conditions, however: that they were purchased from Company; that they are new, unused, current and in good condition; that Direct Dealer has submitted to Company a list of such parts he desires to return; that Company shall, as promptly as possible, notify Direct Dealer as to the parts on said list of any, which Company will accept; that transportation charges be prepaid on the return of such parts; that Direct Dealer shall have complied with the requirements of Company in maintaining a stock of parts; and that on the return of any such goods Direct Dealer shall fully comply with all Bulk Sales and other laws applicable thereto. Company shall accept those parts meeting the above conditions and credit the Direct Dealer with an amount equal to Direct Dealer's net cost, adjusted on the then current prices of such parts but less a charge of 7% to cover the Company's cost of handling. Those parts not meeting the above conditions will be held by Company for fifteen (15) days subject to Direct Dealer's order for disposition. Upon failure of Direct Dealer to order disposition within that time, Company may make such disposition thereof as it sees fit without liability to Direct Dealer for payment in any amount whatsoever.

NON-STANDARD ORDERS No order accepted by Company for products not manufactured by Company or not of standard specifications shall be subject to cancellation or return by Direct Dealer without Company's express consent.

WARRANTY New White trucks purchased hereunder are subject to the standard warranty of Company set forth in "Price List—Appendix A" and "Price List—Appendix B," and no other warranty of guaranty, express or implied by law or otherwise, is authorized or shall apply to the same.

DIRECT DEALER NOT COMPANY'S AGENT It is not the intent that Direct Dealer possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to the products of Company other than contained in the standard warranty of Company.

USE OF NAME The exclusive right to and use of, and the good will attached to, the marks and words "White," "White Motor," "White Sales," and "White Service" and any combination thereof, with reference to motor vehicles and parts and accessories therefor, are reserved to Company and Direct Dealer agrees that he will, upon termination of this agreement or at any time upon demand of Company, discontinue, cease and desist from the use and/or display of these words.

RIGHT OF CANCELLATION This agreement and any renewal or extension thereof may be cancelled and terminated as below provided.

- (a) By mutual consent the parties hereto may at any time cancel and terminate this agreement forthwith.
- (b) Either party hereto, except as provided in paragraphs (c) and (d) below, may cancel and terminate this agreement by giving the other party sixty (60) days written notice of intention so to cancel.
- (c) In the event this agreement is the first White Selling Agreement entered into between Company and Direct Dealer, and if Direct Dealer, since the effective date of this agreement, shall have been actively engaged in the merchandising of the Company's products in accordance with the terms, conditions and provisions of this agreement, the Company agrees that it will not exercise its right to cancel and terminate this agreement, pursuant to the provisions of paragraph (b) above, at any time during the first twelve (12) months period following the effective date of this agreement.
- (d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Company may, at its option, cancel and terminate this agreement at any time without any notice whatsoever to Direct Dealer in case Direct Dealer is a co-partnership or a corporation and disagreements of any nature shall arise between members of the co-partnership or the officers, stockholders or managers of the corporation whereby Company deems its interests may be imperiled; or in case of the incapacity, death or insolvency of Direct Dealer; or in case an application is made to have Direct Dealer declared bankrupt; or in case a receiver or trustee is appointed for Direct Dealer; or in case Direct Dealer makes an assignment for the benefit of creditors; or in case of breach of this agreement on the part of Direct Dealer; or in case Direct Dealer or any of its officers or managers shall be convicted under any criminal laws (either State or Federal); or in case Direct Dealer or any of its officers or managers shall convert any property or embezzle any money either of third parties, or of Direct Dealer in the case of officers or managers; or in case Direct Dealer fails to secure a dealer's license or a renewal thereof in those states requiring dealers' licenses.

TERMINATION OF AGREEMENT

Cancellation or termination of this agreement will not release Direct Dealer from payment of any sum then owing to Company, nor from payment for trucks or equipment for same or parts ordered by Direct Dealer and not delivered to him prior to termination of notice of cancellation.

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RIGHT TO REPURCHASE

Upon termination of this agreement by Company, Company agrees, (except with respect to the products referred to in article captioned "Non-Standard Orders"), to purchase from Direct Dealer and Direct Dealer agrees to sell to Company within twenty (20) days after such termination:

- (a) All new and unused White truck chassis in good condition then owned by Direct Dealer and purchased by him from Company during the six (6) months next preceding Company's notice of cancellation at Direct Dealer's net cost including transportation charges paid to Company.
- (b) All parts then owned by Direct Dealer which in Company's opinion are new, unused, undamaged and in marketable condition at time and place of acceptance by Company and which were purchased by Direct Dealer from Company for use on White chassis erected within a five-year period next preceding Company's notice of cancellation, at Direct Dealer's net cost (as ascertained on the then current prices of such parts), exclusive of transportation charges, and less a charge of 7% to cover Company's expense of handling.

Upon cancellation and termination of this agreement by Direct Dealer, or by natural expiration, or by mutual consent of the parties hereto, Company shall have the right and option to repurchase from Direct Dealer within twenty (20) days after the effective date of such cancellation and termination, any or all White truck chassis and parts then owned by Direct Dealer, at the same prices specified in paragraphs (a) and (b) next preceding.

PERFORMANCE OF AGREEMENT

It is understood and agreed that performance of this agreement by Company and the fulfillment of orders accepted hereunder are subject to strikes, accidents, fire, delays of transportation, commandeering of Company's factory and delays of subcontractors due to such causes, and also to requirements of and orders accepted by Company from duly constituted public authorities and other contingencies beyond Company's control, and that Company shall have the full right at its discretion to reject, wholly or in part any order or specification for goods from Direct Dealer. In no case shall Company be liable for damage or loss sustained by Direct Dealer because of failure to deliver on or before stipulated delivery date. It is further understood and agreed that full performance of this agreement by Direct Dealer is a condition precedent to performance thereof by Company, and that any failure by Company to enforce or to require performance by Direct Dealer of any provision of this agreement or to exercise any option herein granted, shall in no way affect the validity of this agreement or impair the right of Company later on to enforce any such provision or exercise any such option.

ENTIRETY

All negotiations, correspondence and memoranda passing between the parties hereto with reference to the subject matter of this agreement are merged in this agreement, which cancels and supersedes all prior agreements between the parties hereto and constitutes the entire and only agreement between them with reference to said subject matter. This agreement may be altered, modified, or abridged only by written instrument duly executed by an Executive Officer of Company at Cleveland, Ohio, and no transfer of same or of any claim arising hereunder may or can be made without written consent from Company.

SEPARABILITY

It is intended that this agreement shall not be in unlawful violation of any valid applicable laws now or hereafter from time to time in effect in any country, state or jurisdiction and that should any provision herein in any wise contravene said laws, this agreement shall be considered divisible as to such provision and the remainder of the agreement valid and binding as though such provision were not included therein.

DURATION OF AGREEMENT

Company shall not be bound on this agreement until it shall have been approved by an Executive Officer of Company. It shall then be effective on and as of the 1st day of JANUARY 19 55, and continue in effect, subject to the right of cancellation set forth above, until the end of the calendar year then current. Continuation of regular dealings between the parties hereto after the end of such calendar year shall extend this agreement for the next succeeding calendar year, and so on from year to year, subject always to the right of cancellation set forth above.

THE WHITE MOTOR COMPANY

L.B. Kuttel Central
Regional Manager Region

Approved: May 18 19 55

H.O. Greenham
Sales Manager—Wholesale Division

Paul J. ...
Executive Officer and Title

James ...
Assistant Secretary

By *Harold Anderson* d/b/a *Harold Anderson Garage*
Name of Direct Dealer

Harold E. Anderson

INSTRUCTIONS

- If Direct Dealer is:
AN INDIVIDUAL: He should sign his personal name only.
AN INDIVIDUAL OPERATING UNDER TRUSTE NAME: He should sign the name of the trust and his personal name beneath it.
A PARTNERSHIP: Sign partnership name and personal signature of all partners to reach it.
A CORPORATION: Sign corporate name by an authorized officer (President, Secretary, Treasurer) with designation of title.

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[fol. 2850]

D.D.S. - 1

Supplement to Direct Dealer Selling Agreement
between

THE WHITE MOTOR COMPANY

and

Harold Anderson Carazo

Direct Dealer

Dated February 1, 1958

It is agreed that the following conditions shall be applicable to the purchase and sale of Autocar trucks and Autocar parts under the subject Direct Dealer Selling Agreement:

SELLING PRIVILEGE
AND TERRITORY

It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Direct Dealer Selling Agreement also embrace "AUTOCAR" trucks.

ADJUSTMENT ON
OUTSIDE DELIVERIES

The provisions of this article with respect to adjustments on outside deliveries shall be applicable to the sale of AUTOCAR trucks, and the adjustment shall be the amount set forth in the latest issue of the applicable "Direct Dealer Price List--Appendix C".

PRICES, DISCOUNTS
AND TERMS

The point of delivery shall be Exton, Pennsylvania, and the prices, discounts and terms shall be as set forth in the latest issue of the applicable "Direct Dealer Price List--Appendix C". The said Direct Dealer Selling Agreement and this supplement shall cover only such models of AUTOCAR trucks as are set forth in the latest issue of the applicable "Direct Dealer Price List--Appendix C".

ADVERTISING
ACCOUNT

The provisions of this article shall apply to the purchase of AUTOCAR trucks.

SALES UNACCEPTABLE
TO DIRECT DEALER

The provisions of this article shall apply to the sale of AUTOCAR trucks.

SERVICE AND
HANDLING ALLOWANCE
ON NATIONAL ACCOUNTS

The provisions of this article shall apply to the sale of AUTOCAR trucks. The service and handling allowance on sales of AUTOCAR trucks to National Accounts shall be as set forth in the latest issue of the applicable "Direct Dealer Price List--Appendix C".

PARTS SALES
AND DISCOUNTS

It is the intent of this supplement that the words "WHITE Parts and accessories" as they appear in this article of the Direct Dealer Selling Agreement also embrace "AUTOCAR" parts and accessories. "AUTOCAR" parts sales and discounts shall be those outlined in the latest issue of the applicable "Direct Dealer Price List--Appendix C".

y850

[fol. 2851]

DETACH AND RETURN

City Waco State Texas Date Feb 10 1958

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix A²
 (superseding all previous lists) effective January 10, 1958, the terms of which are accepted and agreed to.

Buckland
 Witness

Harold E. Buckland
 Name of Direct Dealer

By _____

DETACH AND RETURN

City Wilmington State North Carolina Date Feb 10 1958

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List — Appendix C
 effective February 1, 1958, the terms of which are accepted and agreed to.

Buckland
 Witness

Harold E. Buckland
 Name of Direct Dealer

By _____

DETACH AND RETURN

City Waco State Texas Date Dec 15 1957

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix A
 (superseding all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to.

Buckland
 Witness

Harold E. Buckland
 Name of Direct Dealer

By _____

[fol. 2852]

DETACH AND RETURN

City Minneapolis State Minnesota Date 12-12 1957

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix B (superseding all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to.

[Signature]
Witness[Signature]
Name of Direct Dealer

By _____

DETACH AND RETURN

City Willmar State Minnesota Date 7-5 1956

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix A (superseding all previous lists) effective November 15, 1955, the terms of which are accepted and agreed to.

[Signature]
Witness[Signature]
Name of Direct Dealer

By _____

DETACH AND RETURN

City Willmar State Minnesota Date 7-5 1956

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix B (superseding all previous lists) effective November 15, 1955, the terms of which are accepted and agreed to.

[Signature]
Witness[Signature]
Name of Direct Dealer

By _____

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DETACH AND RETURN

City Millman State Missouri Date May 27 19 55

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix A (superseding all previous lists) effective January 1, 1955, the terms of which are accepted and agreed to.

Pickens
Witness

Harold Anderson
Name of Direct Dealer

By _____

DETACH AND RETURN

City Millman State Missouri Date May 27 19 55

Received from The White Motor Company, Cleveland, Ohio, Direct Dealer Price List Appendix B (superseding all previous lists) effective January 1, 1955, the terms of which are accepted and agreed to.

Pickens
Witness

Harold Anderson
Name of Direct Dealer

By _____

[fol. 282]

PLAINTIFF'S EXHIBIT (EDGEINGTON) 25



Key Dealer SELLING AGREEMENT

Between

BAUMERT-MORAN SALES CO. INC.

920

CITY

Hartford

CITY

Maple Avenue

STREET

Connecticut

STATE

SAMUEL FISHKIN & SON INC.

NEW LONDON

569 (P O Box 284)

CITY

New London

CITY

Colman

STREET

Connecticut

STATE

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[fol. 2883]

This agreement made in quadruplicate this

1st

day of

January

1955

by and between

BAUBERT-MOAN SALES CO INC

Distributor's Name

at Hartford, Conn

hereinafter called "Distributor," and

SAMUEL FISHKIN & SON INC

Key Dealer's Name

**KEYMARK
CORPORATION**
A Corporation

of

New London

City

New London

County

Conn.

State

hereinafter called "Key Dealer," witnesseth

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

**SELLING PRIVILEGE
AND TERRITORY**

Key Dealer is hereby granted the right, except as hereinafter provided, to sell, during the life of this agreement in the territory described below, White trucks purchased from Distributor hereunder:

New London County with the exception of Schuster's Express in Colchester
(Description of Territory)**MERCHANDISING AGREEMENT**

Key Dealer agrees to develop the aforementioned territory to the satisfaction of Distributor, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms or corporations having a place of business and no purchasing headquarters in said territory.

Key Dealer further agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, nor to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Distributor in writing. Key Dealer further agrees to maintain a sales room and service station adequate for the sale and servicing of White trucks in said territory and to purchase and display prominently about his place of business the authorized White sales and service sign.

**ADJUSTMENT ON OUTSIDE
DELIVERIES**

Key Dealer agrees that should any new White truck sold and delivered by him be first registered and so placed in initial service within the territory of another of The White Motor Company's dealers or distributors, to pay to such other dealer or distributor an adjustment on each such truck, provided he shall have received from such other dealer or distributor written notice of claim for adjustment within sixty (60) days after date of delivery into the other dealer's or distributor's territory, the amount of such adjustment to be as specified in the latest issue of the applicable Key Dealer Price List—Appendix A or "Price List—Appendix B".

STOCKING NEW TRUCKS

Key Dealer agrees to purchase and keep on display at all times a representative stock of White trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. Distributor, however, will not ship any truck to Key Dealer except on Key Dealer's specific order.

**PRICES, DISCOUNTS
AND TERMS**

Distributor agrees to sell to Key Dealer at the factory of The White Motor Company, a Cleveland Ohio, new White truck standard chassis, including standard equipment and accessories mounted thereon, for cash, in full, at the respective prices and subject to the discounts, terms and conditions set forth in the Key Dealer Price List and subject to the terms and conditions set forth in the company's sales handbooks, all of which are subject to change without advance notice. "Price List—Appendix B" will be issued by The White Motor Company through Distributor from time to time, and the latest issue thereof shall become a part of this agreement. Prices shall be increased by a flat charge for outer delivery over from Cleveland Ohio, to point of delivery, by the amount of man, tractor's transportation charge as shown in price lists, and by all sales, gross receipts, commission, service, and any and all special taxes of whatever kind levied on the trucks sold, and in effect as of date of delivery, or on any way

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collectible payable by Distributor to The White Motor Company with respect thereto. Distributor agrees to furnish Key Dealer demand-invoices for all trucks and equipment purchased hereunder, such invoices showing separately the selling prices of the chassis, bodies, cabs, and equipment.

PRICE PROTECTION. In the event The White Motor Company reduces the price of any truck which is in the stock of Key Dealer and which was purchased hereunder and which is new, unused and unsold, and which was purchased by Distributor from The White Motor Company during the six (6) months next preceding such reduction, Distributor shall refund on credit Key Dealer the difference between the price paid by Key Dealer to Distributor and the price he would have paid after such reduction, provided, however, written claim for such refund or credit, supported by evidence satisfactory to Distributor, is received by him from Key Dealer within twenty (20) days after the effective date of such price reduction. In case of truck purchased by Key Dealer under a trust receipt or similar instrument, Distributor reserves the right to pay such difference in price to the holder thereof instead of to the Key Dealer.

Should The White Motor Company increase the prices on any of its current truck models, Key Dealer may, within five (5) days from receipt of notice of such increase, cancel all unshipped orders previously placed by him for trucks affected by the change excepting orders as referred to below in article captioned "Non Standard Orders."

The production by The White Motor Company of a new truck model or series of models, different from any previously sold to Key Dealer, regardless of price, shall not constitute a change in price within the meaning of this provision.

ADVERTISING ACCOUNT. Key Dealer agrees to pay in addition to all other charges the sum of Fifteen Dollars (\$15.00) for each White Truck purchased hereunder. Such payments shall be credited to Key Dealer's Advertising account on Distributor's books and will be used to cover the cost of such advertising media which, in the judgment of Distributor and The White Motor Company, will most effectively stimulate or promote the sale of White products in Key Dealer's territory.

RETAIL DELIVERY REPORT. Key Dealer agrees to provide Distributor with a "Retail Delivery Report" form supplied by The White Motor Company through Distributor, said report to be completely and accurately filled in and mailed to Distributor within five (5) days following the date of delivery of each new White truck by Key Dealer to a retail purchaser.

SALES UNACCEPTABLE TO KEY DEALER. In the event Key Dealer has an opportunity to sell a White truck on terms and conditions unacceptable to him, Distributor upon being so notified by Key Dealer, may resell him the such sales item and, in payment, Key Dealer as a party mutually agreed upon in writing, consented and agreed that it shall release with delivery thereon and Key Dealer to design, service and handling allowance thereon, all of which shall be mutually waived and released.

NATIONAL ACCOUNT AND GOVERNMENT SALES. Key Dealer agrees that The White Motor Company may withdraw from the above described territory to any firm, corporation or subsidiary of the latter designated by The White Motor Company as a "National Account" as well as to the Federal or any State Government or any agency, department or political subdivision thereof, without any obligation whatever. Key Dealer, in the past or hereafter, of The White Motor Company except as hereinafter provided.

SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS. In the event The White Motor Company sells any new White truck listed in said Price List-Appendix A or Price List-Appendix B, or in any individual form of corporation designated by The White Motor Company as a "National Account" (which latter category does not include the Federal or State Governments or any department or political subdivision thereof) and such truck is first registered and is placed in regular service within the above specified territory, The White Motor Company agrees to pay to Key Dealer a Service and Handling Allowance on each new truck so delivered on any such national account. The amount of the Service and Handling Allowance shall be determined for each truck model sold White truck listed in Key Dealer's Price List-Appendix A and Price List-Appendix B to be the percentage of the truck's net sales price agreed upon in writing between the Seller, Service and Handling Allowance, and Key Dealer. Key Dealer is authorized to his account as Distributor may keep, provided that Key Dealer agrees to pay to The White Motor Company, in discharging such national account business to the fullest extent practicable, the full amount of such allowance with the cost of service which is service was made and is shall be paid to the Key Dealer by the White Motor Company. The White Motor Company shall retain the right to audit the books and records of Key Dealer to determine the proper payment in settlement of such allowance. The White Motor Company

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PARTS SALES TO NATIONAL AND FLEET ACCOUNTS

accounts by The White Motor Company

Key Dealer agrees to extend to firms and corporations, and subdivisions of the latter, designated by The White Motor Company as "National Accounts" or "Fleet Accounts," and to the United States Government and its agencies and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed the aforementioned ac-

PARTS SALES AND DISCOUNTS

truck parts and accessories to properly serve White customers using Key Dealer territory, the quantity to be determined by mutual agreement. Key Dealer further agrees not to sell any part of White truck parts not manufactured, engineered or ap-

proved by The White Motor Company.

Distributor will sell to Key Dealers new White parts and accessories listed in the latest revised parts books of The White Motor Company at the prices and discounts and on the terms and conditions as provided in the aforementioned "Price List—Appendix A" and "Price List—Appendix B". Key Dealer agrees to purchase from Distributor and maintain at all times an adequate stock of new White

RETURN OF PARTS

Key Dealer may return White parts or accessories in these conditions however, that they were purchased from Distributor, that the parts are in good condition and in good condition, that Key Dealer has collected the Distributor's bill for the parts and accessories, and that Key Dealer shall, as promptly as possible, notify Key Dealer as to the parts on and list of any, which Distributor will accept for return. Key Dealer shall be prepared on the return of such parts, that Key Dealer shall be required to return the parts to Distributor, and that in the return of any such goods Key Dealer shall fully comply with the conditions and other laws applicable thereto. Distributor shall accept those parts meeting the above conditions and credit the Key Dealer with an amount equal to Key Dealer's net cost, adjusted on the then current prices of such parts but less a charge of 2% to cover the Distributor's cost of handling. Those parts not meeting the above conditions will be held by Distributor for fifteen days, after which Key Dealer's order for disposition. Upon failure of Key Dealer to order disposition within that time, Distributor may make a disposition thereof as he sees fit without liability to Key Dealer for payment of any amount whatsoever.

NON-STANDARD ORDERS

No order received by Distributor for products not manufactured by The White Motor Company or not of standard specifications shall be a subject to cancellation or return by Key Dealer without Distributor's express consent.

WARRANTY

New White trucks purchased hereafter shall be warranted by The White Motor Company in accordance with the terms of its standard warranty, set forth in "Price List—Appendix A" and "Price List—Appendix B," and no other warranty or guarantee, express or implied by law or otherwise, is authorized or shall apply to the same.

KEY DEALER NOT AGENT

It is not the intent that Key Dealer possess any authority or power of agency in, by this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Distributor or The White Motor Company, or make promises or representations relative to the products of The White Motor Company other than contained in the standard warranty of said Company.

USE OF NAME

Key Dealer acknowledges that the entire right, title and interest in and the good will attached to the marks and names "White," "White Motor," "White Sales" and "White Service" and any combination thereof, with reference to motor vehicles and parts and accessories manufactured by The White Motor Company, and the Key Dealer, except in the territory in which the Key Dealer is authorized to sell, shall remain at any time upon demand of Distributor or said The White Motor Company, distributor, owner and are to be the use and of copies of these words.

RIGHT OF CANCELLATION

This agreement and any renewal or extension thereof may be cancelled and terminated as follows provided:

- (a) If either party hereto, at any time, shall be in default of the agreement herewith.
- (b) If either party hereto, except as provided in paragraph (a) and (c) hereon, may cancel and terminate this agreement by giving the other party thirty (30) days written notice of intention so to cancel.
- (c) In the event this agreement is the first White Selling Agreement entered into between Distributor and Key Dealer, and if Key Dealer, within the contract period, fails to meet the minimum sales volume, or the minimum handling of White products, as determined with the terms of the agreement, or if the Distributor agrees that he will not expect to have a profitable business relationship with Key Dealer, the Distributor agrees that he will not during the first twelve (12) months, following the effective date of this agreement.

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(d) Notwithstanding the provisions of paragraph (1) and (c) hereinafter, Distributor may, at his option, cancel and terminate this agreement at any time without any liability to Key Dealer in case Key Dealer is a partnership or a corporation and disengagement of any nature shall exist between members of the partnership or the officers, stock holders or members of the corporation with the Distributor or in case the interest may be suspended or in case of the incapacity, death or insolvency of Key Dealer, or in case an individual is made to leave Key Dealer declared bankrupt or in case a receiver or trustee is appointed for Key Dealer, or in case Key Dealer makes an assignment for the benefit of creditors, or in case of breach of this agreement on the part of Key Dealer, or in case Key Dealer or any of its officers or managers shall be convicted under any criminal laws (either State or Federal), or in case Key Dealer or any of its managers shall convert any property or embezzle any money either of third parties, or of Key Dealer in the case of officers or managers, or in case Key Dealer fails to secure a dealer's license or a renewal thereof in the state requiring dealer's license.

TERMINATION OF AGREEMENTS

Cancellation or termination of this agreement will not release Key Dealer from payment of any sum then owing to Distributor for the purchase of the trucks or equipment for same, or parts ordered by Key Dealer and not delivered but completed, terminated, or notice of cancellation. Notwithstanding the Right of Cancellation provisions set forth above, termination of Distributor's Selling Agreement with The White Motor Company shall operate as an automatic cancellation of this agreement and without being required to await expiration of any termination notice period Key Dealer shall have the right if agreeable to The White Motor Company, to enter into a new agreement with said Company or any one it may designate. If during the notice period of termination of Distributor's Selling Agreement with The White Motor Company, Distributor is unable for any reason to sell to Key Dealer with his requirements of White products, the Key Dealer shall have the right to obtain such products from The White Motor Company or anyone it may designate.

RIGHT TO REPURCHASE

Upon termination of this agreement by Distributor, Distributor agrees (except with respect to the goods referred to in paragraph next, "Non Standard Orders") to purchase from Key Dealer and Key Dealer agrees to sell to Distributor within twenty (20) days after such termination:

- All new and unused White truck chassis in good condition then owned by Key Dealer and purchased by him from Distributor during the six (6) months next preceding Distributor's notice of cancellation at Key Dealer's net cost including charges paid to Distributor.
- All parts then owned by Key Dealer which in Distributor's opinion are new, unused, and undamaged and in a salable condition at time and place of purchase by Distributor and which were purchased by Key Dealer from Distributor for use on White chassis erected within a five year period next preceding Distributor's notice of cancellation at Key Dealer's net cost including on the then current prices of such parts, exclusive of transportation charges, and less a charge of 7% to cover Distributor's expense of handling.

Upon cancellation and termination of this agreement by Key Dealer, Key Dealer shall not be entitled to any refund of the purchase price. Distributor shall have the right to return to Key Dealer within twenty (20) days after the effect or date of such cancellation and termination, any or all White trucks and parts then owned by Key Dealer, at the original purchase price, as in (a) and (b) next preceding.

PERFORMANCE OF AGREEMENT

It is understood and agreed that performance of this agreement by Distributor and Key Dealer shall be subject to the following conditions: free delivery of transportation, unloading, unloading of The White Motor Company's factory, and delays of delivery of trucks due to such delays, and also to requirements of and orders accepted by The White Motor Company from duly constituted public authorities and others, and orders received by Distributor or The White Motor Company and that Distributor shall have the full right at its discretion to reject wholly or in part any order or specification for goods from Key Dealer. In no case shall Distributor or The White Motor Company be liable for damages or losses sustained by Key Dealer in its endeavor to deliver on or before stipulated delivery date. It is further understood and agreed that full performance of this agreement by Key Dealer is a condition precedent to performance thereof by Distributor and that any failure by Distributor to deliver or to require performance by Key Dealer of any provision of the agreement to exercise any option hereinafter granted, shall in no way affect the validity of this agreement or impair the right of Distributor later to enforce any such provision or exercise any such option.

ENTIRETY

All negotiations, correspondence and memoranda passing between the parties hereto with reference to the subject matter of this agreement are merged in this agreement, with the words and agreements all prior agreements between the parties hereto and constitutes the entire and only agreement between them with reference to said subject matter. No transfer of this agreement or of any claim arising hereunder can be made without written consent from Distributor.

SEPARABILITY

It is intended that this agreement shall not be in unlawful violation of any valid applicable laws now or hereafter from time to time in effect in any country, state or jurisdiction and that should any provision herein in anywise contravene said laws, this agreement shall be considered divisible as to such provision and the remainder of the agreement valid and binding as though such provision were not included therein.

2886

DURATION OF AGREEMENT Distributor shall not be bound on this agreement until it shall have been approved by Distributor and an authorized agent of The White Motor Company. It shall then be

effective on and as of the 1st day of JANUARY, 19 55, and continue in effect, subject to the right of cancellation set forth above, until the end of the calendar year then current. Cancellation of regular dealings between the parties hereto after the end of such calendar year shall extend this agreement for the next succeeding calendar year, and so on from year to year, subject always to the right of cancellation set forth above.

Approved.

April 8

1955

THE WHITE MOTOR COMPANY

By

J. E. Tolan
Regional Manager

By

H. E. Lushen
Sales Manager—Wholesale Division

SAMUEL FISKIN & SON INC.

Name of Key Dealer

By *Leonard S. T. Khan*

BAUMERT-MORAN SALES CO INC.

Name of Distributor

By *Baumert Moran*

INSTRUCTIONS

If Key Dealer is:

AN INDIVIDUAL. He should sign his personal name only.

AN INDIVIDUAL OFFERING UNDER TRADE NAME. He should

sign the trade name and his personal name below it.

PARTNERSHIP. Sign partnership name and personal signature of all

partners in each name.

CORPORATION. Sign corporate name by its authorized officer (President, Treasurer) with designation of title.

2887

{Vol. 2889}

L.B.S. - 1
2-58

Supplement to Key Dealer Selling Agreement
between
BAUMERT MORAN SALES CO INC

Distributor

and

SAMUEL FISHKIN & SON INC

Key Dealer

Dated Jan. 1, 1955, 1955

It is agreed that the following conditions shall be applicable to the purchase and sale of Autocar trucks and Autocar parts under the subject Key Dealer Selling Agreement:

**SELLING PRIVILEGE
AND TERRITORY**

It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Key Dealer Selling Agreement also embrace "AUTOCAR" trucks.

**ADJUSTMENT ON
OUTSIDE DELIVERIES**

The provisions of this article with respect to adjustments on outside deliveries shall be applicable to the sale of AUTOCAR trucks, and the adjustment shall be the amount set forth in the latest issue of the applicable "Key Dealer Price List - Appendix C".

**PRICES, DISCOUNTS
AND TERMS**

The point of delivery shall be Exton, Pennsylvania, and the prices, discounts and terms shall be as set forth in the latest issue of the applicable "Key Dealer Price List - Appendix C". The said Key Dealer Selling Agreement and this supplement shall cover only such models of AUTOCAR trucks as are set forth in the latest issue of the applicable "Key Dealer Price List - Appendix C".

**ADVERTISING
ACCOUNT**

The provisions of this article shall apply to the purchase of AUTOCAR trucks.

**SALES UNACCEPTABLE
TO KEY DEALER**

The provisions of this article shall apply to the sale of AUTOCAR trucks.

**SERVICE AND
HANDLING ALLOWANCE
ON NATIONAL ACCOUNTS**

The provisions of this article shall apply to the sale of AUTOCAR trucks. The service and handling allowance on sales of AUTOCAR trucks to National Accounts shall be as set forth in the latest issue of the applicable "Key Dealer Price List - Appendix C".

**PARTS SALES
AND DISCOUNTS**

It is the intent of this supplement that the words "WHITE Parts and Accessories" as they appear in this article of the Key Dealer Selling Agreement also embrace "AUTOCAR" parts and accessories. "AUTOCAR" parts sales and discounts shall be those outlined in the latest issue of the applicable "Key Dealer Price List - Appendix C".

2889

[fol. 2890]

DETACH AND RETURN

City **NEW LONDON** Conn. Date **L- 1-17-58** 19__

Received from **BAUMERT MORAN SALES CO INC** Price List Appendix A (superseding
Name of Distributor

all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to

[Signature] **SAMUEL FISHKIN & SON INC**
Witness Name of Key Dealer

Leonard S. Fishkin

DETACH AND RETURN

City **NEW LONDON** Conn. Date **L- 1-17-58** 19__

Received from **BAUMERT MORAN SALES CO INC** Price List Appendix B (superseding
Name of Distributor

all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to

[Signature] **SAMUEL FISHKIN & SON INC**
Witness Name of Key Dealer

Leonard S. Fishkin

DETACH AND RETURN

New London Conn. Date 19__

Baumert-Moran Sales Co. Inc.

Samuel Fishkin & Son Inc.

Leonard S. Fishkin

[fol. 2891]

DETACH AND RETURN			
City	State	Date	19
Received from BAUMERT MORAN SALES CO. INC.		Price List Appendix B (superseding	
Name of Distributor			
all previous lists) effective November 15, 1954, the terms of which are accepted and agreed to.			
By <u>Samuel Fishkin & Son Inc.</u>		Name of Key Dealer	
By <u>Leonard Fishkin</u>			

DETACH AND RETURN			
City	State	Date	19
Received from BAUMERT MORAN SALES CO INC		Price List Appendix A (superseding	
Name of Distributor			
all previous lists) effective November 15, 1955, the terms of which are accepted and agreed to.			
By <u>Clement A. Paulin</u>		Name of Key Dealer	
By <u>Leonard Fishkin</u>		Name of Key Dealer	

DETACH AND RETURN			
City	State	Date	19
Received from BAUMERT MORAN SALES CO INC		Price List Appendix B (superseding	
Name of Distributor			
all previous lists) effective November 15, 1955, the terms of which are accepted and agreed to.			
By <u>Clement A. Paulin</u>		Name of Key Dealer	
By <u>Leonard S. Fishkin</u>		Name of Key Dealer	

[fol. 2984]

PLAINTIFF'S EXHIBIT (EDGERTON) 33



Dealer
SELLING AGREEMENT

between

POPULAR WHITE TRUCK & EQUIPMENT COMPANY
 DISTRIBUTOR

111

NUMBER

West 12th Street
 STREET

Erie,
 CITY

Pennsylvania
 STATE

and

ROY S. CARLSON
 DEALER

R.J. 3,

NUMBER

STREET

EDINBORO,
 CITY

PENNSYLVANIA
 STATE

2984

[fol. 2985]

This agreement made in quadruplicate this 1st day of January 19 55.

by and between **POPLAR WHITE TRUCK & EQUIPMENT COMPANY** of **Erie, Pennsylvania**
Distributor's Name

hereinafter called "Distributor," and **ROY S. CARLSON**
Dealer's Name

An Individual
 Not an organized association
 Not an corporation or other
 of **Edinboro, Erie, Pennsylvania**
City County State

hereinafter called "Dealer," witnesseth

In consideration of the mutual agreements herein contained, the parties hereto agree as follows

SELLING PRIVILEGE AND TERRITORY

Dealer is hereby granted the right, except as hereinafter provided, to sell, during the life of this agreement in the territory described below. White trucks purchased from Distributor hereunder

Edinboro-(ERIE County, Pa.) and vicinity
(Description of territory)

MERCHANDISING AGREEMENT

Dealer agrees to develop the aforementioned territory to the satisfaction of Distributor, and not to sell any trucks, purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and not purchasing headquarters in said territory.

Dealer further agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation nor to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Distributor in writing. Dealer further agrees to maintain a sales room and service station adequate for the sale and servicing of White trucks in said territory and to purchase and display conspicuously about his place of business the authorized White sales and service sign.

ADJUSTMENT ON OUTSIDE DELIVERIES

Dealer agrees that should any new White truck sold and delivered by him be first registered and or placed in initial service within the territory of another of The White Motor Company's dealers or distributors, to pay to such other dealer or distributor an adjustment on each such truck, provided he shall have received from such other dealer or distributor written notice of claim for adjustment within sixty (60) days after date of delivery into the other dealer's or distributor's territory, the amount of such adjustment to be as specified in the latest issue of the applicable Dealer "Price List-Appendix A" or "Price List-Appendix B."

STOCKING NEW TRUCKS

Dealer agrees to purchase and keep on display at all times a representative stock of White trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. Distributor, however, will not ship any trucks to Dealer except on Dealer's specific order.

PRICES, DISCOUNTS AND TERMS

Distributor agrees to sell to Dealer at the factory of The White Motor Company at Cleveland, Ohio, new White truck standard chassis, including standard equipment and accessories mounted thereon, for cash in full at the respective prices and subject to the discounts, terms, and provisions or at the Dealer net prices and subject to the terms and provisions set forth in Dealer price lists entitled "Price List-Appendix A," "Price List-Appendix B," and the latest issue of The White Motor Company's sales handbook, all of which are subject to change without advance notice. "Price List-Appendix A," and "Price List-Appendix B," will be issued by The White Motor Company through Distributor from time to time and the latest issue thereof shall become

[fol. 2987]

PARTS SALES TO NATIONAL AND FLEET ACCOUNTS

Dealer agrees to extend to firms and organizations and institutions, as the latter designate, by The White Motor Company as "National Accounts" or "Fleet Accounts" and to the Federal and State governments and departments and, without subjecting them to the same discounts on parts and accessories as authorized and allowed by the aforementioned accounts by The White Motor Company.

PARTS SALES AND DISCOUNTS

Distributor will sell to Dealer new White parts and accessories covered in the latest revised parts books of The White Motor Company at the prices and discounts set forth in the terms and conditions as provided in the aforementioned "Price List—Appendix A" and "Price List—Appendix B." Dealer agrees to purchase from Distributor and maintain at all times an adequate stock of new White truck parts and accessories to properly service White trucks operating in Dealer's territory, the quantity to be determined by mutual agreement. Dealer further agrees not to sell or use in repair of White trucks parts not manufactured, engineered or approved by The White Motor Company.

RETURN OF PARTS

Dealer may return White parts to Distributor on the following conditions: (a) that they are new, unused, current and in good condition; (b) that Dealer has submitted to Distributor a list of such parts he desires to return; (c) that Distributor shall, as promptly as possible, return to Dealer as to the parts on said list, if any, which Distributor will accept; that transportation charges, he prepaid on the return of said parts, that Dealer shall have complied with the requirements of Distributor in maintaining a stock of parts; and that in the return of any such goods Dealer shall fully comply with all Bulk Sales and other laws applicable thereto. Distributor shall accept those parts meeting the above conditions and credit the Dealer with an amount equal to Dealer's net cost, as reflected in the then current prices of such parts but less a charge of 7% to cover the Distributor's cost of handling. Those parts not meeting the above conditions will be held by Distributor for fifteen (15) days subject to Dealer's order for disposition. Upon failure of Dealer to order disposition within that time, Distributor may make such disposition thereof as he sees fit without liability to Dealer for payment of any amount whatsoever.

NON-STANDARD ORDERS

No order accepted by Distributor for products not manufactured by The White Motor Company or not of standard specifications shall be subject to cancellation or return by Dealer without Distributor's express consent.

WARRANTY

New White trucks purchased hereunder are warranted by The White Motor Company in accordance with the terms of its standard warranty set forth in "Price List—Appendix A" and "Price List—Appendix B" and no other warranty or guaranty express or implied by law or otherwise is authorized or shall apply to the same.

DEALER NOT AGENT

It is not the intent that Dealer possess any authority or power of agency under this contract nor that he shall have any right or authority to enter into contracts for or on behalf of Distributor or The White Motor Company or make promises or representations relative to the products of The White Motor Company other than contained in the standard warranty of said Company.

USE OF NAME

Dealer acknowledges that the exclusive right to and use of and the good will attached to the names and words "White," "White Motor," "White Sales" and "White Service" and any combination thereof with reference to motor vehicles and parts and accessories therefor, are reserved to The White Motor Company and the Dealer agrees that he will, upon termination of this agreement or at any time upon demand of Distributor or said The White Motor Company, discontinue, cease and desist from the use and or display of these words.

RIGHT OF CANCELLATION

This agreement and any renewal or extension thereof may be cancelled and terminated as below provided:

- By mutual consent the parties hereto may at any time cancel and terminate this agreement forthwith.
- Either party hereto, except as provided in paragraphs (c) and (d) below, may cancel and terminate this agreement by giving the other party sixty (60) days written notice of intention so to cancel.
- In the event this agreement is the first White Selling Agreement entered into between Distributor and Dealer, and if Dealer, since the effective date of this agreement, shall have been actively engaged in the merchandising of White products in accordance with the terms, conditions and provisions of this agreement, the Distributor agrees that he will not exercise his right to cancel and terminate this agreement, pursuant to the provisions of paragraph (b) above, at any time during the first twelve (12) month period following the effective date of this agreement.
- Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Distributor may, at his option, cancel and terminate this agreement at any time without any notice whatsoever to Dealer in case Dealer is a co-partnership or a corporation and disbursements of any nature shall arise between members of the co-partnership or the officers, stockholders or managers of the corporation whereby Distributor deems his interest may be prejudiced, or in case of the incapacity, death or insolvency of Dealer, or in case an application is made to have Dealer declared bankrupt, or in case a receiver or trustee is appointed for Dealer; or in case Dealer makes an assignment for the benefit of creditors; or in case

7987

[fol. 2989]

DURATION OF AGREEMENT Distributor shall not be bound on this agreement until it shall have been approved by Distributor and an authorized agent of The White Motor Company. It shall then be effective on and as of the 1st day of JANUARY 1955 and continue in effect, subject to the right of cancellation set forth above, until the end of the calendar year then current. Continuation of regular dealings between the parties hereto after the end of such calendar year shall extend this agreement for the next succeeding calendar year, and so on from year to year, subject always to the right of cancellation set forth above.

Approved April 25 1955

THE WHITE MOTOR COMPANY

By [Signature]

Regional Manager

By [Signature]

Sales Manager—Wholesale Division

ROY S. CAULSON

Name of Dealer

By [Signature]

POPULAR WHITE TRUCK & EQUIPMENT COMPANY

Name of Contributor

By [Signature]

INSTRUCTIONS

If Dealer is

AN INDIVIDUAL: He should sign his personal name only.

AN INDIVIDUAL OPERATING UNDER TRADE NAME: He should sign the trade name and his personal name beneath it.

PARTNERSHIP: Sign partnership name and personal signatures of all partners beneath it.

CORPORATION: Sign corporate name by an authorized officer (Pres., Secy., Treas.) with designation of title.

1959

[fol. 2990]

DETACH AND RETURN

City, Edinboro, State, Pennsylvania Date, February 1, 1958

Received from KILGUS WHITE TRUCK & EQUIPMENT CO. Dealer Price List, Appendix C
Name of Distributor

effective January 10, 1958, the terms of which are accepted and agreed to

R. E. Lewis
WitnessROY S. CARLSON
Name of DealerBy *Roy Carlson*

DETACH AND RETURN

City, Edinboro, State, Pennsylvania Date, February 1, 1958

Received from POPLAR WHITE TRUCK & EQUIPMENT CO.
Name of Distributor

Dealer Price List, Appendix C

effective February 1, 1958, the terms of which are accepted and agreed to

R. E. Lewis
WitnessROY S. CARLSON
Name of DealerBy *Roy Carlson*

1990

[fol. 2991]

d.S. - 1

**Supplement to Dealer Selling Agreement
between**

POPULAR WHITE TRUCK & EQUIPMENT CO.
Distributor

and

ROY S. CRIMSON
Dealer

Dated January 1, 1955

It is agreed that the following conditions shall be applicable to the purchase and sale of Autocar trucks and Autocar parts under the subject Dealer Selling Agreement:

**SELLING PRIVILEGE
AND TERRITORY**

It is the intent of this supplement that the words "WHITE TRUCKS" as they appear in the Dealer Selling Agreement also embrace "AUTOCAR" trucks.

**ADJUSTMENT ON
OUTSIDE DELIVERIES**

The provisions of this article with respect to adjustments on outside deliveries shall be applicable to the sale of AUTOCAR trucks, and the adjustment shall be the amount set forth in the latest issue of the applicable "Dealer Price List--Appendix C".

**PRICES, DISCOUNTS
AND TERMS**

The point of delivery shall be Exton, Pennsylvania, and the prices, discounts and terms shall be as set forth in the latest issue of the applicable "Dealer Price List--Appendix C". The said Dealer Selling Agreement and this supplement shall cover only such models of AUTOCAR trucks as are set forth in the latest issue of the applicable "Dealer Price List--Appendix C".

**ADVERTISING
ACCOUNT**

The provisions of this article shall apply to the purchase of AUTOCAR trucks.

**SALES UNACCEPTABLE
TO DEALER**

The provisions of this article shall apply to the sale of AUTOCAR trucks.

**SERVICE AND
HANDLING ALLOWANCE
ON NATIONAL ACCOUNTS**

The provisions of this article shall apply to the sale of AUTOCAR trucks. The service and handling allowance on sales of AUTOCAR trucks to National Accounts shall be as set forth in the latest issue of the applicable "Dealer Price List--Appendix C".

**PARTS SALES
AND DISCOUNTS**

It is the intent of this supplement that the words "WHITE Parts and Accessories" as they appear in this article of the Dealer Selling Agreement also embrace "AUTOCAR" parts and accessories. "AUTOCAR" parts sales and discounts shall be those outlined in the latest issue of the applicable "Dealer Price List--Appendix C".

2991

[fol. 2992]

DETACH AND RETURN

City Edinboro, State Pennsylvania Date November 12, 1957Received from POPULAR WHITE TRUCK & EQUIPMENT CO. Price List Appendix A (superseding
Name of Distributor

all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to

[Signature]
WitnessROY S. CARLSON
Name of DealerBy [Signature]

DETACH AND RETURN

City Edinboro, State Pennsylvania Date November 12, 1957Received from POPULAR WHITE TRUCK & EQUIPMENT CO. Price List Appendix B (superseding
Name of Distributor

all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to

[Signature]
WitnessROY S. CARLSON
Name of DealerBy [Signature]

DETACH AND RETURN

City Edinboro, State Pennsylvania Date November 12, 1957Received from POPULAR WHITE TRUCK & EQUIPMENT CO. Price List Appendix A (superseding
Name of Distributor

all previous lists) effective November 15, 1956, the terms of which are accepted and agreed to

[Signature]
WitnessROY S. CARLSON
Name of DealerBy [Signature]

v992

[fol. 2093]

DETACH AND RETURN			
City <u>Edinboro,</u>	State <u>Pennsylvania</u>	Date <u>November 15, 1955</u>	
Received from <u>POPULAR WHITE TRUCK & EQUIPMENT CO.</u>		Price List Appendix <u>A</u> (superseding	
Name of Distributor			
all previous lists) effective November 15, 1955, the terms of which are accepted and agreed to			
<u>[Signature]</u> Witness		ROY S. CARLSON Name of Dealer	
		By <u>[Signature]</u>	

DETACH AND RETURN			
City <u>Edinboro,</u>	State <u>Pennsylvania</u>	Date <u>November 15, 1955</u>	
Received from <u>POPULAR WHITE TRUCK & EQUIPMENT CO.</u>		Price List Appendix <u>A</u>	
Name of Distributor			
all previous lists) effective November 15, 1955 the terms of which are accepted			
<u>[Signature]</u> Witness		ROY S. CARLSON	
		By <u> </u>	

DETACH AND RETURN			
City <u>Edinboro,</u>	State <u>Pennsylvania</u>	Date <u>November 15, 1955</u>	
Received from <u>POPULAR WHITE TRUCK & EQUIPMENT CO.</u>		Price List Appendix <u>B</u> (superseding	
Name of Distributor			
all previous lists) effective November 15, 1955 the terms of which are accepted and agreed to			
<u>[Signature]</u> Witness		ROY S. CARLSON Name of Dealer	
		By <u>[Signature]</u>	

[7-6-2010]

PLAINTIFF'S EXH

NY 35



**Metropolitan
Dealer
SELLING AGREEMENT**

FAIRBANKS TRUCKS, INC.

12-74

Rochester,

Harold Street
STREET

New York STATE

ARTI TOOLS
METROPOLITAN DEALER

108
STREET

Fenn Yan,

Lake Street
STREET

New York STATE

3010

[fol. 3012]

PRICE PROTECTION

In the event The White Motor Company reduces the price of any truck which is in the stock of Metropolitan Dealer and which was purchased hereunder, and which is new, unused and unused, it which was purchased by Distributor from The White Motor Company during the six (6) months next preceding such reduction, the Distributor shall refund or credit Metropolitan Dealer the difference between the price paid by Metropolitan Dealer for such truck and the price he would have paid after such reduction, provided, however, written claim for such refund or credit is received by Distributor, is received by him from Metropolitan Dealer within twenty (20) days after the effective date of such price reduction. In case of truck purchased by Metropolitan Dealer under a trust receipt or similar instrument, Distributor reserves the right to pay such difference in price to the holder thereof instead of to the Metropolitan Dealer.

Should The White Motor Company increase the price on any of its current truck models, Metropolitan Dealer may, within five (5) days from receipt of notice of such increase, cancel all unshipped orders previously placed by him for trucks affected by the change excepting orders as referred to below in article captioned: "Non-Standard Orders."

The production by The White Motor Company of a new truck model or series of models different from any previously sold to Metropolitan Dealer, regardless of price, shall not constitute a change in price within the meaning of this provision.

ADVERTISING ACCOUNT

Metropolitan Dealer agrees to pay in addition to all other charges for Sales & Truck Trucks (\$15.00) for each White Truck purchased hereunder. Such payments shall be sent to Metropolitan Dealer's Advertising account and will be used to cover the cost of such advertising, which will be at the judgement of Distributor and The White Motor Company, will most effectively stimulate and promote the sale of White trucks in Metropolitan Dealer's territory.

RETAIL DELIVERY REPORT

Metropolitan Dealer agrees to provide Distributor with a Retail Delivery Report, to be supplied by the White Motor Company through Distributor, and to be filled out and returned to Metropolitan Dealer within five (5) days following the date of delivery of each new White truck to Metropolitan Dealer to a retail purchaser.

SALES UNACCEPTABLE TO METROPOLITAN DEALER

In the event Metropolitan Dealer has an opportunity to sell a White truck which is sold on terms unacceptable to him, Distributor, upon being notified by Metropolitan Dealer, may elect to self handle such sales direct and compensate Metropolitan Dealer as may be mutually agreed upon. It being understood that in all such cases, all rights and claims of Metropolitan Dealer to discount, service and handling allowance shall be waived and released.

NATIONAL ACCOUNT AND GOVERNMENT SALES

Metropolitan Dealer agrees that The White Motor Company may sell direct to the whole or described territory to any firm, corporation or subdivision of the latter designated by The White Motor Company as a "National Account" as well as to the Federal or any State Government or any department or political subdivision thereof, with authority to place whatever to Metropolitan Dealer on the part of Distributor or The White Motor Company except as hereinafter provided.

SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS

In the event The White Motor Company sells any new White truck sold on terms designated by "Price List—Appendix A" or "Price List—Appendix B" direct to any firm, corporation, designated by The White Motor Company as a "National Account" (which classification does not include the Federal or State Governments or any department or political subdivision thereof) and/or placed in direct service within the territory described territory, Distributor agrees, upon the conditions below stated, to pay Metropolitan Dealer on each new White truck sold on such terms, an amount which shall be called "Service and Handling Allowance." The amount of the "Service and Handling Allowance" shall be the amount specified for each model of new White truck listed in Metropolitan Dealer "Price List—Appendix A" and "Price List—Appendix B," it being understood that such direct deliveries are subject to no further discount, commission or otherwise. Such "Service and Handling Allowance" shall be paid to Metropolitan Dealer in cash or credited to his account as Distributor may elect. It is further agreed that Metropolitan Dealer agrees to cooperate with Distributor and The White Motor Company in developing such national accounts to the fullest extent that in each case Metropolitan Dealer shall have established local contact with the national account. All deliveries were made and/or shall have performed functions of delivery, coordinating and service to the national account. The White Motor Company, that written claim for such allowances shall have been filed with Distributor within thirty (30) days of the date of such delivery into Metropolitan Dealer's territory, and that Distributor has received payment in settlement of such claim from the White Motor Company.

PARTS SALES TO NATIONAL AND FLEET ACCOUNTS

Metropolitan Dealer agrees to extend to any firm, corporation or subdivision of the latter designated by The White Motor Company as a "National Account" as well as to the Federal or any State Government or any department or political subdivision thereof, the same discounts on parts and accessories as with respect to the same as provided in the "Price List—Appendix A" and "Price List—Appendix B" by The White Motor Company.

PARTS SALES AND DISCOUNTS

Distributor agrees to extend to any firm, corporation or subdivision of the latter designated by The White Motor Company as a "National Account" as well as to the Federal or any State Government or any department or political subdivision thereof, the same discounts on parts and accessories as with respect to the same as provided in the "Price List—Appendix A" and "Price List—Appendix B" by The White Motor Company. White truck parts and accessories to property sold by White trucks, as well as parts and accessories to property sold by White trucks, shall be sold at the same discounts as provided in the "Price List—Appendix A" and "Price List—Appendix B" by The White Motor Company.

3012

[fol. 3013]

RETURN OF PARTS

Metropolitan Dealer may return White parts to Distributor, on these conditions, however, that they were purchased from Distributor, that they are new, unused, current and in good condition, that Metropolitan Dealer has submitted to Distributor a list of such parts he desires to return, that Distributor will, as promptly as possible, notify Metropolitan Dealer as to the parts on said list, if any, which Distributor will accept, that transportation charges be paid on the return of such parts, that Metropolitan Dealer shall have complied with the requirements of Distributor in maintaining a stock of parts; and that in the return of any such goods Metropolitan Dealer shall fully comply with all White rules and other laws applicable thereto. Distributor shall accept those parts meeting the above conditions and credit the Metropolitan Dealer with an amount equal to Metropolitan Dealer's net cost, adjusted on the then current prices of such parts but less a charge of 10% to cover the Distributor's cost of handling. Those parts not meeting the above conditions will be held by Distributor for fifteen (15) days subject to Metropolitan Dealer's order for disposition. Upon failure of Metropolitan Dealer to order disposition within that time, Distributor may make such disposition thereof as he sees fit without liability to Metropolitan Dealer for payment of any amount whatsoever.

NON-STANDARD ORDERS

No order accepted by Distributor for products not manufactured by The White Motor Company or not of standard specifications shall be subject to cancellation or return by Metropolitan Dealer without Distributor's express consent.

WARRANTY

New White trucks purchased hereunder are warranted by The White Motor Company in accordance with the terms of its standard warranty set forth in "Price List—Appendix A" and "Price List—Appendix B" and no other warranty or guaranty, express or implied by law or otherwise, is authorized or shall apply to the same.

METROPOLITAN DEALER NOT AGENT

It is not the intent that Metropolitan Dealer possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Distributor or The White Motor Company, or make promises or representations, relative to the products of The White Motor Company other than contained in the standard warranty of said Company.

USE OF NAME

Metropolitan Dealer acknowledges that the exclusive right to and use of and the good will attached to the marks and words "White," "White Motor," "White Sales" and "White Service" and any combination thereof with reference to motor vehicles and parts and accessories therefor, are reserved to The White Motor Company and the Metropolitan Dealer agrees that he will, upon termination of this agreement or at any time upon demand of Distributor or said The White Motor Company, discontinue, cease and desist from the use and/or display of these words.

RIGHT OF CANCELLATION

This agreement and any renewal or extension thereof may be canceled and terminated as hereinafter provided:

- (a) By mutual consent the parties hereto may at any time cancel and terminate this agreement as follows:
- (b) Either party hereto, except as provided in paragraphs (c) and (d) below, may cancel and terminate this agreement by giving the other party sixty (60) days written notice of intention so to cancel.
- (c) In the event this agreement is the first White Selling Agreement entered into between Distributor and Metropolitan Dealer and if Metropolitan Dealer, since the effective date of this agreement, shall have been actively engaged in the manufacturing of White products in accordance with the terms, conditions and provisions of this agreement, the Distributor agrees that he will not exercise his right to cancel and terminate this agreement pursuant to the provisions of paragraph (b) above, at any time during the first twelve (12) month period following the effective date of this agreement.
- (d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Distributor may, at his option, cancel and terminate this agreement at any time without any notice whatsoever to Metropolitan Dealer in case Metropolitan Dealer is a co-partnership or a corporation and disagreements of any nature shall arise between members of the co-partnership or the officers, stockholders or managers of the corporation whereby Distributor deems his interest may be imperiled, or in case of the incapacity, death or insolvency of Metropolitan Dealer, or in case an application is made to have Metropolitan Dealer declared bankrupt, or in case a receiver or trustee is appointed for Metropolitan Dealer, or in case Metropolitan Dealer makes an assignment for the benefit of creditors, or in case of breach of this agreement on the part of Metropolitan Dealer, or in case Metropolitan Dealer or any of its officers or managers shall be convicted under any criminal laws (state or Federal), or in case Metropolitan Dealer or any of its managers shall be convicted of any crime or misdemeanor, or in case of third parties, or of Metropolitan Dealer in the case of officers or managers, or in case Metropolitan Dealer fails to secure a Dealer's license or a renewal thereof in those states requiring Dealer's license.

TERMINATION OF AGREEMENTS

Cancellation or termination of this agreement will not release Metropolitan Dealer from payment of any sum then owing to Distributor, nor from payment for trucks or equipment for sale, or parts ordered by Metropolitan Dealer and not delivered to him prior to termination of this agreement. Notwithstanding the Right of Cancellation provisions, any termination of this agreement shall require the Metropolitan Dealer to enter into a new agreement with said Company or any one it may designate. If during the notice period of termination of Distributor's Selling Agreement with The White Motor Company, Distributor fails to fix any reason why it terminates the agreement with the requirements of White products, the Metropolitan Dealer shall have the right to obtain such products from The White Motor Company or anyone it may designate.

[fol. 3014]

RIGHT TO REPURCHASE

RIGHT TO REPURCHASE Upon termination of this agreement by Distributor, Distributor agrees (except with respect to the products referred to in article captioned "Non-Standard Orders.") to purchase from Metropolitan Dealer and Metropolitan Dealer agrees to sell to Distributor within twenty (20) days after such termination:

- (b) All parts transferred by Metropolitan Dealer which in Distributor's opinion are new, unused, undamaged and in merchantable condition at time of purchase by Distributor and which were purchased by Metropolitan Dealer from Distributor for resale to a customer of Distributor within a five (5) day period next preceding Distributor's notice of cancellation at Metropolitan Dealer's request (indicated on the then current price of such parts), exclusive of transportation charges, and less a charge of 1% in respect of Distributor's cost of handling.

Client understands and agrees to the terms of this agreement by Metrodeal, Dealer, or by natural cancellation, or by mutual consent of the parties hereto. This vehicle shall have New Right and option to repurchase from Metrodeal Dealer within twenty (20) days after the effective date of sale. Cancellation and termination, any of all White trucks and parts form owned by Metrodeal Dealer, at the same prices specified in paragraphs (a) and (b) next preceding.

PERFORMANCE OF AGREEMENT

[illegible]

ENTIRETY

[illegible]

SEPARABILITY

SEPARABILITY. It is intended that this agreement shall be enforceable in whole or in part notwithstanding any law or rule of law or public policy which renders any or all provisions of this agreement unenforceable. If any provision of this agreement is held to be unenforceable, the remaining provisions shall nevertheless remain in full force and effect. The intent of the parties is that this agreement shall be enforceable in whole or in part notwithstanding any law or rule of law or public policy which renders any or all provisions of this agreement unenforceable. If any provision of this agreement is held to be unenforceable, the remaining provisions shall nevertheless remain in full force and effect.

DURATION OF AGREEMENT

[illegible]

Accepted

E100, WILLIS TOWERS WATSON COMPANY

By - 11

37

186161-11053

ANAL. Calcd for $C_{10}H_{10}O$: C, 88.10%; H, 7.39%. Found: C, 88.1%; H, 7.4%. IR (KBr): 1715 (C=O), 1640 (C=C), 1600 (C=C), 1580 (C=C), 1540 (C=C), 1520 (C=C), 1500 (C=C), 1480 (C=C), 1460 (C=C), 1440 (C=C), 1420 (C=C), 1400 (C=C), 1380 (C=C), 1360 (C=C), 1340 (C=C), 1320 (C=C), 1300 (C=C), 1280 (C=C), 1260 (C=C), 1240 (C=C), 1220 (C=C), 1200 (C=C), 1180 (C=C), 1160 (C=C), 1140 (C=C), 1120 (C=C), 1100 (C=C), 1080 (C=C), 1060 (C=C), 1040 (C=C), 1020 (C=C), 1000 (C=C), 980 (C=C), 960 (C=C), 940 (C=C), 920 (C=C), 900 (C=C), 880 (C=C), 860 (C=C), 840 (C=C), 820 (C=C), 800 (C=C), 780 (C=C), 760 (C=C), 740 (C=C), 720 (C=C), 700 (C=C), 680 (C=C), 660 (C=C), 640 (C=C), 620 (C=C), 600 (C=C), 580 (C=C), 560 (C=C), 540 (C=C), 520 (C=C), 500 (C=C), 480 (C=C), 460 (C=C), 440 (C=C), 420 (C=C), 400 (C=C), 380 (C=C), 360 (C=C), 340 (C=C), 320 (C=C), 300 (C=C), 280 (C=C), 260 (C=C), 240 (C=C), 220 (C=C), 200 (C=C), 180 (C=C), 160 (C=C), 140 (C=C), 120 (C=C), 100 (C=C), 80 (C=C), 60 (C=C), 40 (C=C), 20 (C=C), 0 (C=C).

3014

DETACH AND RETURN		
City <u>Punta Yan,</u>	State <u>New York</u>	Date <u>February 1, 1958</u>
Received from <u>PARKER WHITE TRUCKS, INC.</u>		Metropolitan Dealer Price List—
Name of Distributor		
Appendix C effective February 1, 1958, the terms of which are accepted and agreed to.		
<u>[Signature]</u>	<u>PARKER WHITE TRUCKS</u>	
Witness	Name of Metropolitan Dealer	
By <u>[Signature]</u>		

3015

[fol. 3016]

M.D.B. - 1

Supplement to Metropolitan Dealer Selling Agreement

Between

Distributor

and

Metropolitan Dealer

Dated

It is hereby stated the following conditions shall be a part of the Metropolitan Dealer Selling Agreement for all car trucks and Autocar parts under the subject title, and the following Agreement:

SALES PRIVILEGE AND TERRITORY

It is the intent of this supplement that the words "all car trucks" as they appear in the Metropolitan Dealer Selling Agreement also embrace "AUTOCAR" trucks.

ADJUSTMENT ON OUTSIDE DELIVERIES

The provisions of this article shall apply to the sale of car trucks outside deliveries shall be applicable to the sale of AUTOCAR trucks, and the adjustment shall be the same as set forth in the latest issue of the applicable "Metropolitan Dealer Price List-Appendix C".

PRICE, DISCOUNTS AND TERMS

The point of delivery shall be Baton Rouge, Louisiana, and the prices, discounts and terms shall be as set forth in the latest issue of the applicable "Metropolitan Dealer Price List-Appendix C". The said Metropolitan Dealer Selling Agreement and this supplement shall cover only such models of AUTOCAR trucks as are set forth in the latest issue of the applicable "Metropolitan Dealer Price List-Appendix C".

ADJUSTMENT ON ACCOUNT

The provisions of this article shall apply to the purchase of AUTOCAR trucks.

SALES UNACCEPTABLE TO METROPOLITAN DEALER

The provisions of this article shall apply to the sale of AUTOCAR trucks.

SERVICE AND HANDLING ALLOWANCE ON NATIONAL ACCOUNTS

The provisions of this article shall apply to the sale of AUTOCAR trucks. The service and handling allowance on sales of AUTOCAR trucks to National Accounts shall be as set forth in the latest issue of the applicable "Metropolitan Dealer Price List-Appendix C".

PARTS SALES AND DISCOUNTS

It is the intent of this supplement that the words "all car trucks and Accessories" as they appear in this article of the Metropolitan Dealer Selling Agreement also embrace "AUTOCAR" parts and accessories. "AUTOCAR" parts sales and discounts shall be those outlined in the latest issue of the applicable "Metropolitan Dealer Price List-Appendix C".

3016

[fol. 3017]

DETACH AND RETURN		
City <u>Born Yan,</u>	State <u>New York</u>	Date <u>January 10, 1958</u>
Received from <u>PARKER WHITE TRUCKS, INC.</u>		Price List Appendix A (superseding
Name of Distributor		
all previous lists) effective January 10, 1958, the terms of which are accepted and agreed to.		
<u>Leon P. Lee</u>	<u>MARTIN JONES</u>	
Witness	Name of Metropolitan Dealer	
By <u>Lee P. Lee</u>		

DETACH AND RETURN		
City <u>Born Yan,</u>	State <u>New York</u>	Date <u>November 15, 1957</u>
Received from <u>PARKER WHITE TRUCKS, INC.</u>		Price List Appendix A (superseding
Name of Distributor		
all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to.		
<u>Leon P. Lee</u>	<u>MARTIN JONES</u>	
Witness	Name of Metropolitan Dealer	
By <u>Lee P. Lee</u>		

DETACH AND RETURN		
City <u>Born Yan,</u>	State <u>New York</u>	Date <u>November 15, 1957</u>
Received from <u>PARKER WHITE TRUCKS, INC.</u>		Price List Appendix B (superseding
Name of Distributor		
all previous lists) effective November 15, 1957, the terms of which are accepted and agreed to.		
<u>Leon P. Lee</u>	<u>MARTIN JONES</u>	
Witness	Name of Metropolitan Dealer	
By <u>Lee P. Lee</u>		

[fol. 3018]

DETACH AND RETURN

City _____ State _____ Date _____ 19__

Received from _____ Place List Appendix A superseding

Name of Distributor

all previous lists) effective November 15, 1956, the terms of which are accepted and agreed to.

Witness _____

Name of Metropolitan Leader _____

By _____

DETACH AND RETURN

City _____ State _____ Date _____ 19__

Received from _____ Place List Appendix B superseding

Name of Distributor

all previous lists) effective November 15, 1956, the terms of which are accepted and agreed to.

Witness _____

Name of Metropolitan Leader _____

By _____

3018

500

[fol. 3019]

FD-300 (4-54)

WHOLESALE APPOINTMENT NOTICE 11/25/56

Region Metropolitan (55) Branch _____ Type of Contract Wholesale Dealer
 Firm Name Martin Jones Contract Effective 10-1-56
 Address 100 Park St. St. Penn Yan City New York State _____
 Owner Martin Jones

Exceptions to Standard Agreement

✓	COPIES	✓	REMARKS TO DEPARTMENTS
	Advertising Dept.	C. I. T.	PLEASE NOTE: Formerly a dealer under the Rochester distributorship. Recontracted as of 10-1-56 as a Metropolitan Dealer under: Parker White Trucks, Inc. 69-71 Humboldt Street Rochester, New York
	Demonstration Dept.	G. C. Frank	
	Credit Dept.	E. F. Bate	
	Parts & Service Dept.	C. W. Kullman	
	Printing Dept.	W. L. Davis	
	Service Sales Division	Geo. H. Scragg	
	Shipping Dept.		
	Traffic Dept.		
	Sales Training Dept.		

WHOLESALE DIVISION

DETACH AND RETURN

City New York State New York Date 11-25-56

By Martin Jones Name of Representative Date List Appendix A (superceding)

(If previously signed) effective November 15, 1955 the terms of which are hereby accepted.

Witness

By Martin Jones Dealer

3019-

[Fol. 3020]

DETACH AND RETURN

City NEW YORKApproved by JOHN F. BURNETT

Name of Contractor

All previous bids effective November 15, 1955 the terms of which are as follows:

Witness

207

502

[fol. 3021]



INTEROFFICE LETTER

To Mr. W. C. Gresham
Sales Manager

From Mr. J. S. McGrath

Office Cleveland Region Date November 1935

Subject Martin Jones - Metropolitan Dealer
Yonk Yan, New York

MAIL
DIVISION Wholesale Division - R.O.

cc - Mr. E. Harrison

Dear Noah:

I am attaching four copies of Metropolitan Dealer Selling Agreement between Parker White Trucks, Inc. and Martin Jones, of Yonk Yan, New York. This contract replaces the former Dealer Selling Agreement, dated January 1, 1935, and is therefore merely a continuation of an existing contract.

No credit arrangements are made for a Dealer of this type.

J.S. :VB
e.c.

J. S. McGrath

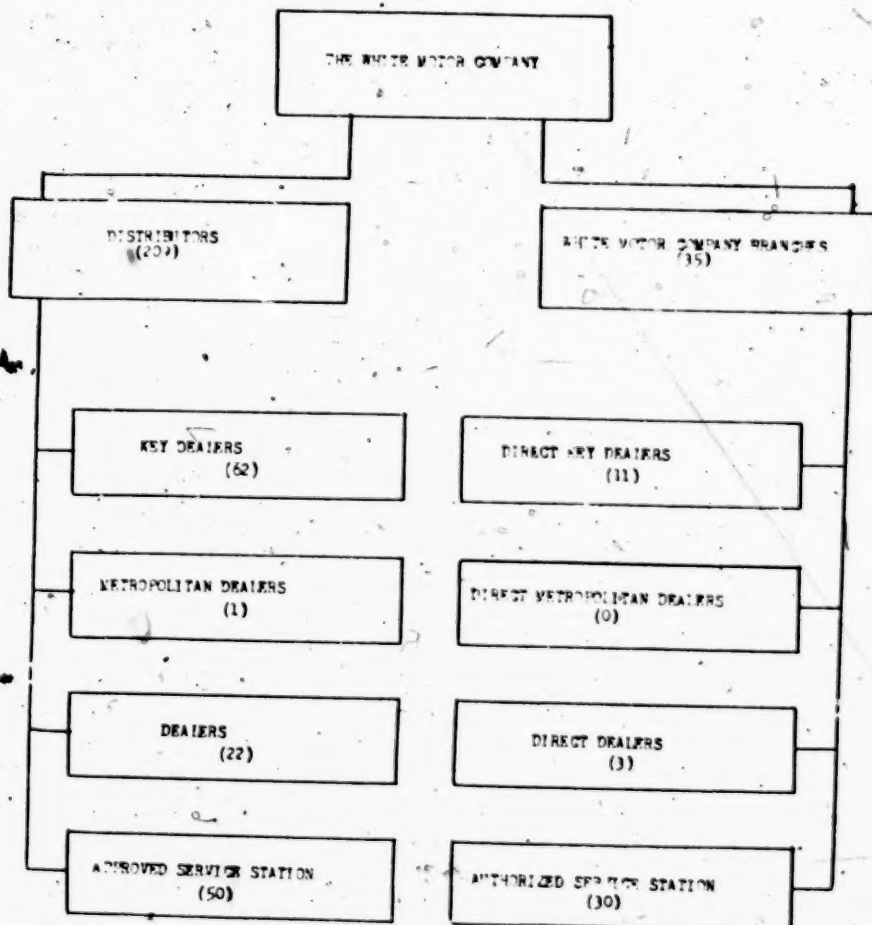
File

3021

copies retained 11-26-35

[fol. 3022]

PLAINTIFF'S EXHIBIT (EDGERTON) 36



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DEC 21 1961

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. ~~849~~ 57

THE WHITE MOTOR COMPANY

Appellant,

vs.

UNITED STATES OF AMERICA

Appellee.

RECEIVED

MAY 10 1962

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.**

JURISDICTIONAL STATEMENT.

**JOHN H. WATSON, JR.,
JOHN T. SCOTT,
JAMES M. PORTER,**

**1649 Union Commerce Building,
Cleveland 14, Ohio,
*Counsel for Appellant.***

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<i>Northern Pacific Railway Company v. United States</i> , 356 U. S. 1 (1958)	2
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<i>United States v. Bausch & Lomb Optical Co.</i> , 45 Fed. Supp. 387 (D. C., S. D., N. Y., 1942); decree modified, 321 U. S. 707 (1944)	11
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<i>United States v. Imperial Chemical Industries</i> , 100 Fed. Supp. 504 (D. C., S. D., N. Y., 1951)	12
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Statutes

Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 3 and 4, commonly known as the Sherman Antitrust Act:	
Section 1	2, 3, 4, 10, 16
Section 3	2, 3, 4, 10, 16
Section 4	2, 4

Act of February 11, 1903, 32 Stat. 823, 15 U. S. C.
§ 29, as amended by Section 17 of the Act of June
25, 1948, 62 Stat. 869, 989, commonly known as
the Expediting Act:

Section 2 ----- 2

Miscellaneous.

Federal Rules of Civil Procedure,

Rule 56 ----- 5

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. _____

THE WHITE MOTOR COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.**

JURISDICTIONAL STATEMENT.

Appellant appeals from the final judgment of the United States District Court for the Northern District of Ohio, Eastern Division, entered on September 5, 1961, granting a permanent injunction against appellant, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW.

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division, sustaining appellee's motion for summary judgment is reported in 194 Fed. Supp. 562. A copy of the opinion and a copy of the final judgment are attached hereto as Appendix I and Appendix II, respectively.

JURISDICTION.

This suit is a civil proceeding brought by the appellee, under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. § 4, commonly known as the Sherman Antitrust Act, to prevent and restrain alleged violations by appellant of Sections 1 and 3 of said Act. The suit was filed on June 30, 1958, and the final judgment of the District Court was dated and entered on September 5, 1961, and Notice of Appeal was filed in that Court on October 26, 1961. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. § 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869, 989. The following decisions sustain the jurisdiction to review this judgment: *Associated Press v. United States*, 326 U. S. 1 (1945); *Northern Pacific Railway Company v. United States*, 356 U. S. 1 (1958); *United States v. Parke, Davis & Co.*, 362 U. S. 29 (1960).

QUESTIONS PRESENTED.

The following questions are presented by this appeal:

1. Whether provisions in contracts between the appellant (a manufacturer of motor trucks) and its distributors and dealers, which provide that the distributor or dealer (as the case might be) is granted the exclusive right (with certain specified exceptions) to sell during the life of the contract, in a certain specified territory, "White" and "Autocar" trucks purchased from the appellant under the contract, and that the distributor or dealer (as the case might be) agrees not to sell such trucks except to individuals, firms or corporations having a place of business and/or purchasing headquarters in said territory, can

properly be held, on a motion for summary judgment, to be illegal *per se* as being, as a matter of law, in unreasonable restraint of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U. S. C., §§ 1 and 3), even though facts which might be shown in evidence at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

2. Whether provisions in contracts between the appellant and its distributors and dealers, which provide that the distributor or dealer (as the case might be) agrees not to sell "White" and "Autocar" trucks purchased from the appellant under the contract, to any person, firm or corporation (except to the appellant or the appellant's distributors or dealers) for resale by such person, firm or corporation, nor to any Federal or State Government or any department or political subdivision thereof, unless the right to do so is specifically granted by the appellant, can properly be held, on a motion for summary judgment, to be illegal *per se* as being, as a matter of law, in unreasonable restraint of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U. S. C., §§ 1 and 3), even though facts which might be shown in evidence at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

3. Whether, even if the aforesaid provisions of contracts between the appellant and its distributors and dealers which the United States District Court for the Northern District of Ohio, Eastern Division, has found, in this case, to be illegal should be found by the Supreme Court to be illegal, the judgment entered by the District Court is improper in that it does not sufficiently identify the provisions of said contracts which are adjudged to be illegal

and in that the injunctive provisions contained in the judgment are so broad as to enjoin, or be subject to the construction that they enjoin, actions which are neither illegal nor actions which it is necessary or appropriate to enjoin in order to prevent resumption by the appellant of the actions found by the District Court to be illegal.

STATUTES INVOLVED.

Sections 1, 3 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 3 and 4, commonly known as the Sherman Antitrust Act, are set forth in Appendix III hereto.

STATEMENT.

The amended complaint in this suit, filed on March 28, 1960, by the United States of America, the appellee herein, alleged that The White Motor Company, the appellant herein, and its franchised distributors and dealers had been and were engaged in an unlawful combination and conspiracy, and that they had been and were then parties to contracts between the appellant, a manufacturer of trucks and parts thereof, and its distributors or direct dealers or between a distributor and dealers under the distributor, which, in violation of Sections 1 and 3 of the Sherman Act, contained (a) provisions granting to each distributor or dealer, the exclusive right (with certain specified exceptions) to sell "White" and "Autocar" (a name for certain trucks manufactured by the appellant) trucks in a certain defined territory, and providing that the said distributor or dealer would not sell "White" or "Autocar" trucks except to customers who had a place of business or purchasing headquarters in said territory, and (b) provisions that the distributor or dealer would not sell "White" or "Autocar" trucks to others for resale or to

any Federal or State Government or any department or political subdivision thereof, such customers being reserved exclusively by the appellant for its direct sales, and (c) provisions that the distributor would sell "White" and "Autocar" trucks and parts to the distributor's dealers at prices fixed by the appellant and that the distributor or dealer would sell "White" or "Autocar" parts to customers designated by the appellant as "National Accounts" and "Fleet Accounts" and Federal and State Governments at prices fixed by the appellant; and the amended complaint prayed for an injunction against the continuance of the alleged unlawful combination and conspiracy and the alleged unlawful provisions of said contracts.

The appellant's answer to the amended complaint admits the allegations in the amended complaint that have to do with the jurisdiction of the District Court and the venue of this action and certain averments alleging in substance that the appellant is an Ohio corporation engaged in the manufacture of "White" and "Autocar" trucks and parts thereof which it markets through its distributors and dealers throughout the United States, but denies all of the other allegations in the amended complaint.

The appellee, on April 18, 1960, filed a motion, under Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in favor of the appellee on the ground that the pleadings and the deposition of Alfred D. Edgerton (the Secretary of The White Motor Company) with the accompanying exhibits, "establish that the defendant has entered into written contracts with its distributors and dealers: (a) allocating territories and customers in the sale of White trucks; (b) fixing the price to be charged by distributors in the sale of White trucks and parts to dealers; and (c) fixing the price to be charged by White, its distributors and its dealers in the sale of parts to the Fed-

eral and state governments and to national and fleet accounts," and that each of the above referred to provisions of the contracts is unreasonable *per se* and illegal *per se* and that the appellee is entitled to judgment as a matter of law.

The provisions of the contracts between the appellant and its distributors which contain the territorial limitations which the appellee alleged to be illegal and associated provisions are as follows:

"1. **SELLING PRIVILEGE AND TERRITORY** Distributor is hereby granted the exclusive right, except as herein-after provided, to sell during the life of this agreement, in the territory described below, White and Autocar trucks purchased from Company hereunder.

(Description of Territory)

"2. **MERCHANDISING AGREEMENT** Distributor agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

"* * * Distributor further agrees to maintain a sales room and service station adequate for the sale and servicing of White and Autocar trucks in said territory and to purchase and display about his place of business authorized sales and service signs, the number of signs and their location to be determined by mutual agreement."

"4. **STOCKING NEW TRUCKS** Distributor agrees to purchase and keep on display at all times a representative stock of White and Autocar trucks in keeping with the potential of the above described territory, the quantity and models to be determined by mutual agreement. For this purpose, it is contemplated that Distributor will carry a stock of White and

Autocar trucks of a value equivalent to one-twelfth of his estimated annual new truck sales. Company, however, in continuation of its long established policy, will not ship any trucks to Distributor or his dealers except on Distributor's specific order."

The portions of the contractual provisions hereinabove quoted which the appellee alleged to be illegal *per se* are the provisions of Article 1 and of the last clause of the first paragraph of Article 2. The other provisions hereinabove quoted are to be considered in connection with the territorial provisions which the appellee claims to be illegal.

The provisions of the contracts between the appellant and its distributors which contain the limitations on the classes of customers to which the distributors may resell "White" and "Autocar" trucks which the appellee alleged to be illegal *per se* are as follows:

"Distributor agrees not to sell nor to authorize his dealers to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct key dealers, and direct dealers, and Distributor's key dealers and dealers are excepted throughout this paragraph.) Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing."

The appellant also sells its trucks and parts directly to certain direct dealers (some are called "direct key dealers"), each of whom is "franchised" by a contract between the appellant and the direct dealer. Appellant's distributors may also appoint dealers (some are called "key dealers" and "metropolitan dealers"), each of whom purchases

appellant's trucks and parts from his distributor, and is "franchised" by a contract between the distributor and the dealer. The provisions of the appellant's contracts with its direct dealers and the provisions of the contracts between the distributors and their respective dealers with reference to territorial limitations and associated provisions and with reference to limitations on the classes of customers to whom appellant's trucks may be resold are substantially the same, in wording, purpose and effect, as the above quoted provisions of appellant's contracts with its distributors, except as appropriately modified on account of the difference in the parties. *

* While the appellant has never had in its contracts with its distributors or dealers any provision with reference to the prices at which the distributors or dealers would sell "White" and "Autocar" trucks to the purchasing public, the contracts between the appellant and its distributors allowed the distributors to appoint dealers under them, and, if a distributor elected to appoint dealers, the distributor was required to sell new "White" and "Autocar" trucks to his dealers at the same prices as those at which the appellant sold "White" and "Autocar" trucks to the appellant's direct dealers, and the contracts among the appellant and the distributors and dealers further provided that the distributors and dealers would allow to "National Accounts" and "Fleet Accounts" and to Federal and State Governments and departments and political subdivisions thereof the same discounts on parts and accessories as were allowed to such customers by the appellant. The former of these two provisions was intended only to prevent the distributors from overcharging any of their dealers and the latter of said two provisions was intended only to assure to the classes of customers therein described, proper discounts on parts and accessories purchased by them. The appellant has, however, taken these

two provisions out of its contracts and, on this appeal, is raising no question with reference thereto except as to the breadth of the injunctive provisions in the judgment of the District Court.

The different provisions of the various contracts between the appellant and the distributors and the dealers which the appellee alleged to be illegal have no connection or relationship with each other, either in purpose or effect.

On April 21, 1961, the District Court filed its opinion sustaining appellee's motion for summary judgment, and, on September 5, 1961, entered final judgment adjudging to be illegal "the provisions in the contracts between and among the defendant and its distributors and dealers, (A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and (B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant," and providing that "the defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer or any other person: (A) To limit, allocate or restrict the territories in which or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks; (B) To fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of trucks or parts to any third person."

All injunctive and executory actions provided for in the final judgment were therein stayed and suspended pending the final disposition of this appeal, conditioned upon the appellant's entering into an appeal and supersedeas bond; and the appellant duly furnished such bond.

THE QUESTIONS ARE SUBSTANTIAL.

The questions presented by this appeal raise issues which have not yet been decided by the Supreme Court of the United States and which are of nationwide and far-reaching importance in the interpretation and enforcement of the Sherman Antitrust Act.

As to Distributors' and Dealers' Territorial Limitations

The opinion and the summary judgment of the District Court in this case squarely hold and adjudge that provisions in contracts between the appellant, a truck manufacturer, and its distributors and dealers, whereby each distributor or dealer is granted an exclusive territory and agrees to sell trucks purchased from the appellant only to customers in the distributor's or dealer's exclusive territory, are illegal *per se* as being, *per se*, unreasonable restraints of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act, even though evidence that might be introduced at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

Except for the decision of the District Court in the instant case, the lower Federal Courts, both District Courts and Courts of Appeal, have uniformly, for over half a century, so far as we have been able to find, sustained the legality of territorial limitations in contracts between manufacturers and their distributors or dealers.

See the following decisions of the United States Courts:

Phillips v. Iola Portland Cement Co., 125 Fed. Rep. 593 (C. C. A., 8th Circ., 1903); certiorari denied, 192 U. S. 606 (1904).

Cole Motor Car Co. v. Hurst, 228 Fed. Rep. 280 (C. C. A., 5th Circ., 1915, rehearing denied, 1916); judgment affirmed on second writ of error, *sub nomine*, *Tillar v. Cole Motor Car Co.*, 246 Fed. Rep. 831 (C. C. A., 5th Circ., 1917); certiorari denied, 247 U. S. 511 (1918).

B. S. Pearsall Butter Co. v. Federal Trade Commission, 292 Fed. Rep. 720 (C. C. A., 7th Circ., 1923).

Sinclair Refining Co. v. Wilson Gas & Oil Co., 52 Fed. Rep. (2d) 974 (D. C., W. D., S. C., 1931).

Boro Hall Corporation v. General Motors Corporation, 124 Fed. Rep. (2d) 822 (C. C. A., 2d Circ., 1942), rehearing denied, 130 Fed. Rep. (2d) 196 (C. C. A., 2d Circ., 1942); certiorari denied, 317 U. S. 695 (1943).

United States v. Bausch & Lomb Optical Co., 45 Fed. Supp. 387 (D. C., S. D., N. Y., 1942); decree modified, 321 U. S. 707 (1944).

United States v. Paramount Pictures, Inc., 66 Fed. Supp. 323 (D. C., S. D., N. Y., 1946); judgment modified, 334 U. S. 131 (1948).

Schwing Motor Company v. Hudson Sales Corporation, 138 Fed. Supp. 899 (D. C., D. Md., 1956); affirmed 239 Fed. Rep. (2d) 176 (C. A., 4th Circ., 1956); certiorari denied, 355 U. S. 823 (1957).

Packard Motor Car Co. v. Webster Motor Car Co., 243 Fed. Rep. (2d) 418 (C. A., D. of C., 1957); certiorari denied, 355 U. S. 822 (1957).

United States v. Volkswagen of America, Inc., 182 Fed. Supp. 405 (D. C., D. N. J., 1960).

Reliable Volkswagen S. & S. Co. v. World-Wide Auto Corp., 182 Fed. Supp. 412 (D. C., D. N. J., 1960).

And the opinion and decision of the District Court in the instant case, while following the appellee's brief in that Court in attempting to distinguish the above cited cases on one alleged ground or another, are, we submit, contrary to or inconsistent with the opinions or decisions in these eleven cases. No case was cited by the appellee to support its contentions in the court below which involves the question of the legality of provisions for territorial limitations of distributorships or dealerships, which are contained in the contracts creating such distributorships and dealerships. The cases cited by the appellee in the court below with reference to territorial limitations were all cases where then competing manufacturers made agreements with each other whereby existing competition between them was removed by each agreeing to stay out of a specified territory which was allotted exclusively to the other. See *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211 (1899); *United States v. National Lead Co.*, 63 Fed. Supp. 513 (D. C., S. D., N. Y., 1945), affirmed 332 U. S. 319 (1947); and *United States v. Imperial Chemical Industries*, 100 Fed. Supp. 504 (D. C., S. D., N. Y., 1951). Obviously these cases do not control or apply to the situation in cases where a manufacturer grants to a franchised distributor or dealer an exclusive territory and the distributor or dealer agrees not to sell the manufacturer's products except to customers located in that territory. Both the purpose and the effect of the territorial limitations are entirely different in the two classes of cases.

Since the opinion and decision of the District Court in the instant case are contrary to or inconsistent with all other decisions of the lower Federal courts with reference to territorial limitations in contracts creating distributor-

ships or dealerships, it would seem obvious that the legal questions involved in the appeal herein are substantial.

Furthermore, for probably over half a century it has been the practice of innumerable manufacturing companies in the United States to market their products through distributor and/or dealer organizations created under contracts, between the manufacturing companies and the distributors or dealers, which contain territorial limitations on the operations of the distributors and dealers, and such territorial limitations in such distributor and dealer contracts have been matters of common knowledge for a long time, and, so far as the reports of cases show, the validity thereof has not been challenged by the Antitrust Division of the Department of Justice until recent years. The answer to the question whether such contractual provisions are or are not illegal affects not only a very great number of manufacturing companies but also a vastly greater number of distributors and dealers, in all parts of the United States.

There are two practicable methods by which a manufacturer can market its products over a wide area. One method, which requires a very large amount of capital and is therefore practicable for only the very largest companies, is to market the products through the manufacturing company's own branches and employees. The other method is through a distributor and/or dealer marketing organization created by contracts between the manufacturer and distributors and dealers, whereunder the distributors and dealers in their particular localities furnish the capital, facilities and sales and service organizations necessary to serve the public in their area. The manufacture and sale of motor trucks is one of the most highly competitive industries in the United States, wherein the appellant has

to compete with the much larger and more powerful General Motors Corporation, Ford Motor Company, Chrysler Corporation and International Harvester Company, as well as against Mack Trucks, Inc., a corporation comparable in size to the appellant. Under these circumstances, prudent and responsible business men are not going to spend their money for the necessary sales rooms and service stations and for stocks of the various models of "White" and "Autocar" trucks nor devote the effort and expense required in sales promotion work, if another distributor or dealer selling the same models of trucks but bearing none of the expense of developing a public demand for the trucks, or of furnishing service stations for the trucks, in that area, can take advantage of the sales promotion work and of the furnishing of service facilities done by the distributor or dealer located in the particular territory. If able, responsible and energetic distributors and dealers can no longer be secured, the result will inevitably be that the distributor or dealer organization will deteriorate and the power of competition of the manufacturing company marketing its products through a distributor and/or dealer organization will be lessened. From this result, it follows that the smaller manufacturing companies which do not have the capital to market their products over a wide area through their own branches and employees would be severely hurt by deterioration of their marketing organizations due to the removal of territorial restrictions, and the larger companies which can market their products through their own branches and employees would be benefited, with a consequent reduction of competition in the industry. This appeal, therefore, presents questions of great and nationwide importance, to-wit, whether the removal by judicial decree of territorial limitations on distributorships and dealerships would increase or reduce competition and

whether if it reduces competition and benefits the larger companies at the expense of the smaller companies and destroys or injures the small business men who are distributors or dealers, the territorial limitations placed on distributorships and dealerships by the contracts between manufacturers and their own distributors and dealers can be said to be *per se* unreasonable restraints in violation of the Sherman Antitrust Act.

From another aspect of the situation, it would be most injurious and unfair for the appellant and other manufacturers and distributors and dealers located in the Northern District of Ohio to be precluded or even impeded in marketing their products through a distributor and dealer organization, by absence of distributor and dealer territorial limitations, when the manufacturers and distributors and dealers in other parts of the country are free to operate with the advantages of territorial limitations. The question as to the legality of territorial limitations in agreements between a manufacturer and its own distributors and dealers is a question that should be resolved by the Supreme Court, so that all manufacturers and distributors and dealers in the United States will be bound by the same rules of conduct, and not operate under different rules according to the judicial district in which they are located.

As to Limitations on Classes of Customers

The opinion and the summary judgment of the District Court in this case hold and adjudge that provisions in contracts between the appellant and its distributors and dealers wherein each distributor or dealer agrees not to sell trucks to others for resale and not to sell trucks to any Federal or State Government or any department or political subdivision thereof, unless the right to do so is granted

by the appellant, are illegal *per se*, as being, *per se*, unreasonable restraints of trade and commerce in violation of Sections 1 and 3 of the Sherman Antitrust Act, even though evidence that might be introduced at a trial of the case on the merits might show that, as a matter of fact, the contractual provisions are not in unreasonable restraint of trade and commerce.

Except for the decision of the District Court in the instant case, the lower Federal Courts, both District Courts and Courts of Appeal, have uniformly, so far as we have been able to find, held that provisions of contracts between a manufacturer (or other vendor) and its distributors and dealers with respect to limitations on the classes of customers to which the distributors or dealers may resell the manufacturer's products do not violate the Sherman Antitrust Act and are not illegal as being in unreasonable restraint of trade or commerce.

See the following decisions of the lower United States

Courts:

Green v. Electric Vacuum Cleaner Co., 132 Fed. Rep. (2d) 312 (C. C. A., 6th Circ., 1942); appeal dismissed on motion of counsel for petitioner, 319 U. S. 777 (1943).

P. Lorillard Co. v. Weingarden, 280 Fed. Rep. 238 (D. C., W. D., N. Y., 1922).

Fosburgh v. California & Hawaiian Sugar Refining Co., 291 Fed. Rep. 29 (C. C. A., 9th Circ., 1923).

United States v. Newbury Mfg. Co., 36 Fed. Supp. 602 (D. C., D., Mass., 1941).

Chicago Sugar Co. v. American Sugar Refining Co., 176 Fed. Rep. (2d) 1 (C. A., 7th Circ., 1949); certiorari denied, 338 U. S. 948 (1950).

Bascom Laundry Corp. v. Telecoin Corp., 204 Fed. Rep. (2d) 331 (C. A., 2d Circ., 1953); certiorari denied, 345 U. S. 994 (1953).

Reliable Volkswagen S. & S. Co. v. World-Wide Auto Corp., 182 Fed. Supp. 412 (D. C., D., N. J., 1960).

The only case in the Supreme Court the decision in which seems to have any application to the instant case is the case of *D. R. Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S. 165 (1915), which we believe supports the appellant's contentions on the points now under discussion; and the only other Supreme Court case which might be cited as relevant to the points now under discussion is *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707 (1944), (a case involving a price-fixing scheme, which had been tried on its merits in the court below), where the Supreme Court, in its opinion at page 721, said that a "distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell, except as the seller moves along the route which is marked by the Miller-Tydings Act."

In view of the present state of the authorities, it would seem very clear that the legal questions involved in this appeal with respect to restrictions on the classes of customers to which distributors and dealers may resell commodities are substantial.

The provision in the appellant's contracts with its distributors and dealers that the distributors and dealers may not sell "White" or "Autocar" trucks for resale (except to the appellant or its approved distributors or dealers) without authority from the appellant, is to try to secure fair and honest treatment of the purchasing public

by the persons selling such trucks to the public, since, if the purchasing public does not get fair and honest treatment from the persons selling "White" or "Autocar" trucks to the public, the purchasing public will soon learn to buy competing makes of trucks.

The provision in the appellant's contracts with its distributors and dealers that the distributors and dealers shall not sell "White" or "Autocar" trucks to Federal or State Governments or departments or political subdivisions thereof unless the right to do so is granted by the appellant, is designed to reserve to the appellant the sale of "White" and "Autocar" trucks to Federal or State Governments or departments or political subdivisions thereof, since the appellant can more effectively compete against its competitors by selling trucks directly to such governments and governmental departments and subdivisions rather than by trying to sell trucks to such governments or governmental departments or subdivisions through the interposition of distributors or dealers.

The questions whether a manufacturer may lawfully limit the classes of customers to which its distributors or dealers may resell its products, and more specifically whether a manufacturer may lawfully limit its distributors or dealers to the retail consumer market, as the appellant has done, and whether a manufacturer may lawfully reserve to itself sales to governments and governmental subdivisions as the appellant has done, are, we submit, clearly substantial questions which should be decided by the Supreme Court with nationwide effect.

As to the Provisions of the Judgment

Even if the provisions in the contracts between the appellant and its distributors and dealers with reference to territorial limitations and limitations on the classes of customers to which the distributors and dealers may resell, which the District Court found, in this case, to be illegal, should be found by the Supreme Court to be illegal, there is a substantial question whether the judgment entered by the District Court is improper in that it does not sufficiently identify the provisions of said contracts which are adjudged to be illegal and in that the injunctive provisions contained in the judgment are so broad as to enjoin, or be subject to the construction that they enjoin, actions which are neither illegal nor actions which it is necessary or appropriate to enjoin in order to prevent resumption by the appellant of the actions found by the District Court to be illegal.

We, therefore, respectfully submit that the questions presented by this appeal are substantial questions of law, the conclusive answers to which by this Court are of great importance both to business men and to the public.

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APPENDIX I**IN THE UNITED STATES DISTRICT COURT****FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CIVIL ACTION No. 34,593

UNITED STATES OF AMERICA***Plaintiff*****v.****THE WHITE MOTOR COMPANY*****Defendant***

**MEMORANDUM ON GOVERNMENT'S MOTION
FOR SUMMARY JUDGMENT****KALBFLEISCH, J.**

This action was instituted June 30, 1958, by the United States under Section 4 of the Sherman Act (15 U. S. C. A., 4), charging that, beginning on or about January 1, 1955, defendant, The White Motor Company, hereinafter called White, or defendant, and certain co-conspirators consisting of its various dealers and distributors, have engaged in an unlawful combination and conspiracy in violation of Sections 1 and 3 of the Act (15 U. S. C. A., 1, 3).

The amended complaint charges that White, its distributors and dealers have combined and conspired to restrain interstate commerce by entering into agreements whereby: each distributor and dealer will sell White trucks only to dealers or other buyers who have a place of business or purchasing headquarters within the distributor's or dealer's assigned territory, (Complaint, par. 17(a));

if distributors or dealers sell White trucks outside their specified assigned territories they are obliged to pay certain sums of money to the dealers or distributors in whose territories such White trucks are first registered or placed in initial service, (Complaint, par. 17(b)); distributors and dealers will not sell White trucks to others for resale, (Complaint, par. 17(c)), or to any Federal or State Government or any department or political subdivision thereof, such sales being reserved exclusively by White for direct sales, (Complaint, par. 17(d)); distributors will sell White trucks and parts to dealers at prices fixed by White, (Complaint, par. 17(e)); and distributors and dealers will sell White parts to customers designated by White as National Accounts, Fleet Accounts, and to Federal and State Governments at prices fixed by White, (Complaint, par. 17(f)). The Government charges that White is continuing and will continue the offenses alleged unless enjoined. The relief requested is that White be perpetually enjoined from continuing the alleged conspiracy and from continuing or renewing any of the provisions of its contracts fixing resale prices of White trucks and parts or imposing limitations or restrictions on the territories within which or persons to whom White distributors and dealers may sell trucks.

Defendant has admitted most factual allegations but has denied all charges of illegal conduct. The Government moved for summary judgment on the basis of the pleadings, defendant's answers to interrogatories, the deposition of the defendant's secretary, and accompanying exhibits consisting of representative copies of the contracts and a White distributor and dealer organization chart.

Under Rule 56(c), Federal Rules of Civil Procedure, a motion for summary judgment "shall be rendered forth-

with if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

From the pleadings and exhibits the Court finds that:

Defendant is an Ohio corporation with its principal place of business at Cleveland. (Complaint, par. 3, Answer, par. 3.) It manufactures White and Autocar trucks and truck parts, hereinafter referred to as White trucks and parts, at Cleveland, Ohio, and Exton, Pa., which are sold throughout the United States and the District of Columbia. (Complaint, par. 7, 12, Answer, par. 7, 12.)

After manufacture, White trucks and parts are sold through over two hundred persons, firms or corporations designated by White as "franchised distributors," hereinafter called distributors. Distributors, in turn, sell White trucks and parts at wholesale to over eighty franchised dealers and others. The term "dealer," as used herein, includes the terms "key dealer," "metropolitan dealer," and "dealer" and means any person, firm or corporation so designated by a distributor, with the approval of White, as a retail seller of White trucks and parts. Dealers purchase White trucks and parts from distributors. The term "direct dealer," includes the more than twelve "direct key dealers," "direct metropolitan dealer," and "direct dealers," which are persons, firms or corporations so designated by White as retail sellers of White trucks and parts, to whom White sells its trucks and parts directly. Distributors, dealers and direct dealers are located throughout the United States and the District of Columbia. (Complaint, par. 9, 10, 12, 13; Answer, par. 9, 10, 12, 13; Plaintiff's Exhibit 36.)

In addition to selling through distributors, dealers and direct dealers, defendant sells White trucks and parts di-

rectly to consumers, some of whom are designated as "National Accounts," and to various governmental divisions designated herein as "Government Accounts." (Complaint, par. 12, 13, 14; Answer, par. 12, 13, 14.)

There is a continuous flow in interstate trade and commerce of White trucks and parts from White's manufacturing plants in Ohio and Pennsylvania, through distributors, dealers and direct dealers, to consumers located throughout the United States and the District of Columbia, and from White manufacturing plants in Ohio and Pennsylvania and its sales and service branches directly to consumers located throughout the United States and the District of Columbia, some of which are sometimes designated "National Accounts," and the sales to some of which are sometimes called "Government Sales." (Complaint, par. 14; Answer, par. 14.)

White is one of the leading United States manufacturers of medium to heavy duty trucks and parts therefor (Complaint, par. 15; Answer, par. 15).

The total volume of sales of White trucks by defendant to its various classes of customers was \$102,928,000 in 1955, \$116,110,000 in 1956, \$127,471,000 in 1957, and \$92,699,000 during the first seven months of 1958. (Defendant's Answer to Interrogatory No. 7, Ex. J, more fully set forth in Appendix A of this memorandum.)

Total sales of White truck parts by defendant in each of the years 1955, 1956, and 1957 exceeded \$41,000,000 and were over \$25,000,000 for the first seven months of 1958. (Defendant's Answer to Interrogatory No. 8, Ex. J-1.)

Sales of White truck parts by defendant to the United States Government amounted to \$2,755,000 in 1955, \$915,000 in 1956, \$475,000 in 1957, and \$761,000 for the first seven months of 1958. (Defendant's Answer to Interrogatory No. 8, Ex. J-1.)

The Court further finds that:

At the deposition of Alfred Dixon Edgerton, Secretary of White, copies of thirty-five contracts were authenticated and identified as being representative of all of the various forms of agreements used by defendant throughout its distribution system during the period involved which contain the clauses relevant to this action. (Tr. 28-40.)

Exhibits 1-16, inclusive, consist of *Distributor's Selling Agreements*, Form 626, at least 251 of which were executed or in effect during the relevant period. The printed portions of all of the Form 626 contracts are identical. (Tr. 29, 30.) (It is noted that Exhibit 2 bears the form number 604 but, in view of the testimony and by comparison of the documents, it is apparent that the last page bearing the form number 604 is that of another exhibit and that Exhibit 2 is Form 626.)

Exhibits 17-20, inclusive, consist of *Direct Key Dealer Selling Agreements*, Form 631, eighteen of which were executed or in effect during the relevant period. The printed portions of all of the Form 631 contracts are identical. (Tr. 31.)

Exhibits 21-23, inclusive, consist of *Direct Dealer Selling Agreements*, Form 627, five of which were outstanding during the relevant period. The printed portions of all of the Form 627 contracts are identical. (Tr. 32.)

Exhibits 24-32, inclusive, consist of *Key Dealer Selling Agreements*, Form 682, approximately sixty-two of which were in effect during the relevant period. (Ex. 36.) The printed portions of all Form 682 contracts are identical. (Tr. 36, 37.)

Exhibit 33 consists of a *Dealer Selling Agreement*, Form 713, approximately twenty-two of which were in effect during the relevant period. The printed portions of all Form 713 contracts are identical. (Tr. 39.)

Exhibits 34 and 35 consist of *Metropolitan Dealer Selling Agreements*, Form 604, of which two were outstanding during the relevant period. Printed portions of all Form 604 contracts are identical. (Tr. 40.)

Exhibit 36 consists of a graphic representation of White's distribution system prepared in the normal course of business by White for, and at the request of, the Federal Bureau of Investigation. It is initialed and dated "10/22/57" and indicates the number of White's distributors, dealers and direct dealers and their relationships to each other. (Tr. 20.)

White is a party to all selling agreements with distributors, direct key dealers, direct metropolitan dealers, and direct dealers. White also is a party to all selling agreements between its distributors and key dealers, metropolitan dealers, and dealers, its approval and signature being necessary to validate the agreements.

White provides standard forms selling agreements which its distributors are required to use when entering into contracts with key dealers, metropolitan dealers and dealers. (Par. 9, Distributor Selling Agreement, Form 626.)

DISTRIBUTOR SELLING AGREEMENTS

The Court further finds that:

Paragraph 1 of the Distributor Selling Agreements, Form 626, provides:

"1. *Selling Privilege and Territory.* Distributor is hereby granted the exclusive right except as herein-after provided, to sell during the life of this agreement, in the territory described below, White and Autocar trucks purchased from the Company hereunder." (Thereafter, in each contract is inserted a description of a different geographical area, usually in terms of subdivisions of states or counties.)

In addition to the geographical limitations, certain of the seventeen Distributor Selling Agreements submitted to the Court in connection with this motion contain the following selling restrictions:

Exhibit 1, between White and John L. Boitano White Truck Sales, of Petaluma, Calif., prohibits the distributor from selling "fire truck chassis to the State of California and all political subdivisions thereof."

Exhibit 4, between White and Willey White Truck Co., of Terre Haute, Ind., prohibits that distributor from selling to "Eastern Motor Express, Inc., Vigo Tractor Rentals, Inc., and/or any subsidiary or affiliated companies."

Exhibit 5, between White and Fremont White Truck Sales and Service, of Fremont, Ohio, permits that distributor to sell in Seneca County only to the "account of Paul Gilmore, Inc."

Exhibit 6, between White and Sutton-White Truck Company, of Sacramento, Calif., prohibits that distributor from selling "fire truck chassis to the State of California and all political subdivisions thereof."

Exhibit 11, between White and Midway Garage & Service, Inc., of Monroeville, Ohio, prohibits that distributor from selling to "Mohawk Motor, Inc., and Paul Gilmore, Inc." in Seneca County.

Exhibit 13, between White and Carl Mayr, d.b.a Poplar White Truck & Equipment Co., of Erie, Pa., permits that distributor to sell in Warren County to the "Account of Hammond Iron Works only."

Paragraph 2 of the Distributor Selling Agreements provides:

"Merchandising Agreement. Distributor agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased

hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

"Distributor agrees not to sell nor to authorize his dealers to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct key dealers, and direct dealers, and Distributor's key dealers and dealers are excepted throughout this paragraph.) Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing. Distributor further agrees to maintain a sales room and service station adequate for the sale and servicing of White and Autocar trucks in said territory and to purchase and display about his place of business authorized sales and service signs; the number of signs and their location to be determined by mutual agreement."

Paragraph 9 of the Distributor Selling Agreements provides:

"*Dealer Appointments.* Distributor may, in order to further the sale thereof, appoint key dealers or dealers to sell and service White trucks and White parts within his territory, the key dealers or dealers so appointed and their locations to be subject to Company's approval. For this purpose Distributor shall use only the Company's standard forms— 'White Key Dealer Selling Agreement' and/or 'White Dealer Selling Agreement.'¹ Distributor will give Company advance notice of the cancellation of any such key dealer or dealer agreement."

¹ See below with respect to Dealer Selling Agreements.

Paragraph 10 of the Distributor Selling Agreements provides:

"Wholesale Override on Chassis Sales to Key Dealers.

In the event Distributor sells at wholesale to any of his key dealers any new White standard truck listed in 'Price List—Appendix A' or 'Price List—Appendix B' and purchased hereunder, Company agrees to allow Distributor an amount which shall be called 'Override' in addition to the discounts provided for in Article 5 above and the 'Annual White and Auto-car Truck Bonus' provided for in Article 7 above. The amount of the override shall be that specified for each model of new White truck listed in 'Price List—Appendix A' and 'Price List—Appendix B.' * * *

"The override referred to in this section shall be paid to Distributor within thirty days after the receipt by Company's designated office of such report, subject, however, to the following conditions:

(a) that with respect to all the trucks so reported sold, all the terms, provisions and requirements of this Agreement and of the Key Dealer Selling Agreement and particularly as to standard prices and discounts, shall have been complied with and performed."

Paragraph 13 of the Distributor Selling Agreements provides:

"National Account and Government Sales. Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a 'National Account,' as well as to the Federal or any State Government, or any department or political subdivision thereof, without any obligation whatever on the part of Company to Distributor except as hereinafter provided."

Paragraph 15 of the Distributor Selling Agreements provides:

"Parts Sales to National and Fleet Accounts. Distributor agrees to extend to firms and corporations, and subsidiaries of the latter, designated by Company as 'National Accounts' or 'Fleet Accounts,' and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed the aforementioned accounts by Company."

Paragraph 21 of the Distributor Selling Agreements provides:

"Distributor Not Company's Agent. It is not the intent that Distributor possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to Company's product other than contained in Company's standard warranty."

Paragraph 23 of the Distributor Selling Agreements provides:

"Right of Cancellation. This agreement and any renewal or extension thereof may be cancelled and terminated as below provided:

*"(d) Notwithstanding the provisions of paragraphs (b) and (c) next preceding, Company may, at its option, cancel and terminate this agreement at any time without any notice whatsoever to Distributor * * * in case of breach of this agreement on the part of Distributor;"*

DEALER AND DIRECT DEALER SELLING AGREEMENTS

The Court further finds that:

Direct Dealer (Form 627), Direct Key Dealer (Form 631), Metropolitan Dealer (Form 604), Key Dealer (Form 682), and Dealer (Form 713), Selling Agreements, all contain the following provisions:

"Selling Privilege and Territory. [Type of dealer] is hereby granted the exclusive right, except as herein-after provided, to sell during the life of this agreement, in the territory described below, White trucks purchased from Company hereunder." (Then follows in each contract an inserted description of a geographical area, usually a city, county, or portions thereof. Exhibits 17 and 24 also include provisions excluding the sale of fire truck chassis to the State of California and all political subdivisions thereof.)

"Merchandising Agreement. [Type of dealer] agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder except in accordance with this agreement, and not to sell such trucks except to individuals, firms, or corporations having a place of business and/or purchasing headquarters in said territory.

"[Type of dealer] agrees not to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, nor to sell such trucks to any Federal or State government or any department, or political subdivision thereof, unless the right to do so is specifically granted by Company in writing."

"Prices, Discounts and Terms. [Company or Distributor] agrees to sell to [Type of Dealer] at Company's factory at Cleveland, Ohio, new White truck standard chassis, including standard equipment and accessories mounted thereon, for cash in par funds at the respective prices and subject to the discounts, terms and provisions or at the [Type of Dealer] net prices and subject to the terms and provisions set forth in [Type of Dealer] 'Price List—Appendix A,' 'Price List—Appendix B,' and the latest issue of Company's sales handbook, all of which are subject to change without advance notice. The 'Price List—Appendix A,' and 'Price List—Appendix B,' will be issued by Company from time to time and the latest issue thereof shall become and be a part of this agreement."

"National Account and Government Sales. Company reserves the right to sell direct in the above described territory, to any firm, corporation or subsidiary of the latter designated by Company as a 'National Account,' as well as to the Federal or any State Government, or any department or political subdivision thereof, without any obligation whatever on the part of Company to [Type of Dealer]."

"Parts Sales to National and Fleet Accounts. [Type of Dealer] agrees to extend to firms and corporations, and subsidiaries of the latter, designated by The White Motor Company as 'National Accounts' or 'Fleet Accounts,' and to the Federal and State Governments and departments and political subdivisions thereof, the same discounts on parts and accessories as authorized and allowed them by The White Motor Company."

"Parts Sales and Discounts. [Company or Distributor] will sell to [Type of Dealer] new White parts and accessories listed in the latest revised parts books of The White Motor Company at the prices and discounts and on the terms and conditions as provided in the aforementioned 'Price List—Appendix A' and (or) 'Price List—Appendix B.'"

"Performance of Agreement. * * * It is further understood and agreed that full performance of this agreement by [Type of Dealer] is a condition precedent to performance thereof by [Company or Distributor] and that any failure by [Company or Distributor] to enforce or to require performance by [Type of Dealer] of any provision of this agreement or to exercise any option herein granted, shall in no way affect the validity of this agreement or impair the right of [Company or Distributor] later on to enforce any such provision or exercise any such option."

In addition to the above clauses, the Direct Dealer and Direct Key Dealer contracts provide that:

"[Type of Dealer] Not Company's Agent. It is not the intent that [Type of Dealer] possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Company or make promises or representations relative to the products of Company other than contained in the standard warranty of Company."

The Dealer, Metropolitan Dealer and Key Dealer Selling Agreements contain the following provision: .

"[Type of Dealer] Not Agent. It is not the intent that [Type of Dealer] possess any authority or power of agency under this contract, nor that he shall have any right or authority to enter into contracts for or on behalf of Distributor or The White Motor Company, or make promises or representations relative to products of The White Motor Company other than contained in the standard warranty of said Company."

TRUCK RESALE PRICES

The Court further finds that:

Distributor Selling Agreements and the Dealer Selling Agreements require all distributors to resell White trucks, standard equipment, accessories and parts to dealers at the prices, discounts and terms established by White. Defendant so admits at page 54 of its Brief.

None of the contracts herein require distributors, dealers or direct dealers to sell White trucks to consumers at specified prices.

RESALE PRICES OF PARTS

Defendant admits (Brief, p. 55) (and the contracts under consideration would permit no other construction) that it has entered into agreements with its distributors, dealers and direct dealers, and has required its distributors to enter into agreements with their dealers, fixing and es-

establishing the discounts to be allowed by such distributors, dealers and direct dealers on the sale of White parts and accessories to purchasers designated by White as National Accounts, Fleet Accounts, Federal and State Governments and departments and political subdivisions thereof, and the Court so finds.

RETAIL SALES BY DISTRIBUTORS

The Distributor Selling Agreements neither prohibit the sale of White trucks and parts by distributors to consumers nor require that distributors sell only to dealers, and since there are approximately 209 distributors but a total of only about 85 dealers (Plaintiff's Ex. 36), the Court finds that distributors sell White trucks, standard equipment, accessories and parts at retail to consumers as well as to dealers.

ALLOCATION OF TERRITORY

The Court further finds that:

All Distributor Selling Agreements provide that the distributors may sell White trucks to dealers approved by White for resale only within the distributor's assigned territory.

The agreements under consideration all contain agreements by the distributors, dealers and direct dealers not to sell White trucks except to individuals, firms or corporations having places of business and/or purchasing headquarters within the territories assigned in their respective contracts.

ALLOCATION OF CUSTOMERS

The Court further finds that:

All Distributor, Dealer and Direct Dealer Selling Agreements contain agreements by such distributors,

dealers and direct dealers that they will not sell White trucks to any Federal or State government or any department or political subdivision thereof without permission of White.

All Distributor Selling Agreements contain agreements by such distributors that they will not authorize their dealers to sell White trucks to any Federal or State government or any department or political subdivision thereof without permission of White.

All Dealer Selling Agreements contain agreements by the dealers that they will not sell White trucks to any person, firm or corporation for resale without the written consent of their respective distributors.

All Distributor Selling Agreements contain agreements by such distributors that they will not authorize their dealers to sell trucks to any person, firm or corporation for resale without the written consent of White.

All White Distributor and Direct Dealer Selling Agreements contain agreements by the dealers that they will not sell White trucks to any person, firm or corporation for resale (excluding White, its branches, distributors, dealers and direct dealers approved by White) without the consent of defendant.

Certain of the contracts under consideration contain agreements by distributors, dealers or direct dealers that they will not sell White trucks to specific persons, firms or corporations.

MOTION FOR SUMMARY JUDGMENT

The Government contends its motion should be granted because the subject contracts and other admitted facts constitute restraints of interstate commerce which are *per se* unreasonable, and therefore, without more, are illegal. White opposes the motion on the grounds that the

facts herein do not disclose restraints which are illegal *per se* and that it is entitled to introduce at trial other evidence which, it claims, would prove that its various distributor and dealer contracts do not unreasonably restrain trade.

Defendant herein has filed no opposing affidavits, exhibits or depositions but concessions made in an opposing party's brief may be considered in a motion for summary judgment. *Allison v. Mackey*, 188 F. 2d 983 (C. A. D. C. 1951); 6 Moore's Federal Practice, Second Ed., 2081.

Examples of the ultimate facts which defendant would seek to prove at trial are contained in the following excerpt from its Brief, pp. 4, 5:

* * * the manufacture and sale of trucks is an extremely competitive business, a business as competitive as any business in the United States; that among the defendant's competitors are General Motors Corporation, Ford Motor Company, Chrysler Corporation and International Harvester Company, each much larger and more powerful than The White Motor Company, as well as Mack Trucks, Inc., a corporation about the same size as The White Motor Company; that the competition between the above mentioned truck companies, in fact, fixes the price at which trucks are sold to the consumers; that the provisions of the defendant's contracts, of which the plaintiff complains, do not in fact or in effect unreasonably restrain competition or trade and commerce in the manufacture and sale of trucks, but on the contrary increase such competition by enabling the defendant to have a distributing organization which enables it to compete effectively with its larger and more powerful competitors; that the use of distributors and dealers has been a common method of marketing trucks and other commodities for more than half a century; and that fair and reasonable protection for distributors and dealers is necessary,

or the defendant will lose many competent distributors and dealers, thus reducing competition in the sale of trucks; and that the destruction of the class of small business men, known as distributors and dealers, is not to the public interest; and many other facts that, we believe, will establish to the satisfaction of this Court that the contractual provisions, of which the plaintiff complains, have proper purposes and effects and are not unfair or unreasonable in any respect and that such provisions are not in unreasonable restraint of competition or trade and commerce within the inhibitions of the Sherman Antitrust Act."

Such considerations have no materiality to the issues presently before the Court, namely, whether the admitted facts disclose *per se* violations of the Sherman Act. For if, by "considering the contracts or agreements, their necessary effect and the character of the parties by whom they were made, they were clearly restraints of trade within the purview of the statute, they could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made." *Standard Oil Co. v. United States*, 221 U. S. 1, 65 (1911).

There being no genuine issue as to any material fact upon which the Government relies, the motion for summary judgment may properly be decided on the basis of the pleadings, evidence and briefs now before the Court.

RESALE PRICE MAINTENANCE

Fifty years ago in *Dr. Miles Medical Co. v. Park*, 220 U. S. 373 (1911), the Supreme Court held vertical resale price maintenance agreements to be violations of the Sherman Act. The case arose in this circuit when a manufacturer of proprietary medicines established a system of

contracts for the maintenance of prices fixed by it for wholesale and retail sales of its products and brought an action to enjoin a wholesale druggist, who had refused to enter into such an agreement, from buying Dr. Miles products from others, in violation of their contracts, and then reselling them at cut prices. The Court held that the appellant was not entitled to relief and that the resale price agreements were illegal both at common law and under the Sherman Act. Appellant had urged the business importance of "a standard retail price" and that "confusion and damage have resulted from sales at less than the prices fixed." (Id. 407.) But the Court held that a manufacturer's power "to project his control beyond his own sales must depend, not upon an inherent power incident to production and original ownership, but upon agreement" (Id. 405), that all restraints of trade and interference with liberty of action in trading were contrary to public policy unless the particular restriction could be shown to be reasonable "in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, * * * while at the same time it is in no way injurious to the public." (Id. 407.) The Court stated that the case was "not analagous to that of a sale of good will, or of an interest in a business, or of the grant of a right to use a process of manufacture," for the manufacturer "has conferred no right by virtue of which its purchasers may compete with it." Instead, the manufacturer "retains complete control over the business in which it is engaged, manufacturing what it pleases and fixing such prices for its own sales as it may desire." (Id. 407.) The Court found that the agreements were "designed to maintain prices, after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them." (Id. 407.) It held that:

"* * * agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void. They are not saved by the advantages which the participants expect to derive from the enhanced price to the consumer.

* * * * *

"The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic." (Id. 408, 409.)

In *United States v. Colgate*, 250 U. S. 300 (1919), the Court sustained the dismissal of an indictment which the District Court had interpreted as charging only that defendant had exercised its right to specify resale prices and to refuse to deal with anyone who refused to maintain them. In *United States v. Schrader's Son*, 252 U. S. 85 (1920), followed by *Frey v. Cudahy*, 256 U. S. 202 (1921), and *FTC v. Beech-Nut*, 257 U. S. 441 (1922), the Supreme Court expressly limited the *Colgate* doctrine and reaffirmed *Dr. Miles* as holding that combinations and conspiracies to fix resale prices and "thereby destroy dealers' independent discretion" (252 U. S., at p. 99) were illegal under the Sherman Act. The principles of the *Dr. Miles* case with respect to resale price maintenance have never been questioned by the Supreme Court and were recently reaffirmed in *United States v. Parke, Davis & Co.*, 362 U. S. 29 (1960), discussed below.

United States v. Bausch & Lomb, 321 U. S. 707 (1944), decided after the passage of the Miller-Tydings Act² presented issues similar to those in the instant case.

² The provisos now contained in Section 1 of the Sherman Act (15 U. S. C. A., 1), resulting from legislation known as the Miller-Tydings Act, exempt certain resale price maintenance agreements from the statute's operation.

It was a civil action charging Soft-Lite Lens Co. with violation of Sections 1 and 3 of the Sherman Act by establishing resale price maintenance agreements and certain distribution controls with respect to certain unpatented pink tinted eyeglass lenses bearing the trademark Soft-Lite, and of which Soft-Lite was the sole distributor. Soft-Lite had introduced pink tinted lenses in the United States and at times had engaged various manufacturers to produce these lenses which it would market. Eventually, Soft-Lite entered into an arrangement with one of these manufacturers, Bausch & Lomb, whereby the latter agreed to produce the tinted lenses exclusively for Soft-Lite, not to compete with Soft-Lite in the sale of such lenses, and not to manufacture them for others. *United States v. Bausch & Lomb*, 45 F. Supp. 387, 390 (S. D. N. Y., 1942). As the business grew, Soft-Lite built up a distribution system which included the "licensing" of selected wholesalers who would adhere to its policies, including resale only to those retailers "licensed" by Soft-Lite at prices established by Soft-Lite. Retailers were carefully selected and were not expected to quote prices in their advertisements or operate as adjuncts to department or jewelry stores. The District Court found that while specific, uniform retail prices to consumers were not established by Soft-Lite, retailers were required to maintain prevailing local prices, and to charge premium prices over comparable untinted lenses. consequently, retail prices were not freely allowed to find their own competitive levels. Retailers agreed with Soft-Lite to sell only to consumers or patients. Refusal of wholesalers or retailers to observe the sales and price policies established by Soft-Lite, or sales by wholesalers to retailers not approved by Soft-Lite, resulted in the offending wholesalers' or retailers' having their licenses from Soft-Lite cancelled, thus being no longer entitled

to receive Soft-Lite lenses. In its advertising, Soft-Lite stressed that it was protecting its approved retailers from competition of "unethical practitioners and price cutters," and each participant knew he was a part of a larger system. (45 F. Supp., at 392, 393, 397.)

The District Court concluded that Soft-Lite's distribution system was in violation of the letter and spirit of Sections 1 and 3 of the Sherman Act. Judge Rifkind said, at page 395:

"The principle has long been established that the Sherman Act condemns an agreement between a distributor and a group of wholesalers to boycott all retailers not approved by the distributor and to charge a uniform price to all retailers who are approved." (Citing cases.)

The District Court held that the exclusive manufacturing arrangement between Soft-Lite and Bausch & Lomb was not illegal and, the Supreme Court being equally divided on this issue, its dismissal of Bausch & Lomb was affirmed.

In the Supreme Court, when Soft-Lite admitted that its retail license provisions, binding dealers to sell (1) at locally prevailing prices and (2) only to the public, constituted illegal restraints, the Supreme Court said:

"Our former decisions compel this conclusion. Price fixing, reasonable or unreasonable, is unlawful *per se*." (Citing cases.) The retailer's price to his customer is the single source of stable profits for all handlers." 321 U. S., at pp. 719, 720.

The Court also held that Soft-Lite's agreements with its wholesalers to maintain prices and restrict customers violated Sections 1 and 3 of the Sherman Act:

"Soft-Lite is the distributor of an unpatented article. It sells to its wholesalers at prices satisfactory

to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. A distributor of a trademarked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell, except as the seller moves along the route which is marked by the Miller-Tydings Act. *Dr. Miles v. Park*, 220 U. S. 373, 404. Even the additional protection of a copyright, * * * or of a patent, * * * adds nothing to a distributor's power to control prices of resale by a purchaser. The same thing is true as to restriction of customers." *Id.* 721.

And, at page 723, the Court said:

"So far as the wholesalers are concerned, Soft-Lite and its officers conspired and combined among themselves and with at least some of the wholesalers to restrain commerce by designating selected wholesalers as subdistributors of Soft-Lite products, by fixing resale prices and by limiting the customers of the wholesalers to those recommended by the wholesalers and approved by Soft-Lite—all in violation of the Sherman Act."

Recently, the Supreme Court had occasion to consider how far a manufacturer may go in regulating resale prices and distribution policies of its wholesalers and retailers. In *United States v. Parke, Davis & Co.*, 362 U. S. 29 (1960), a manufacturer of pharmaceuticals was charged with violation of Sections 1 and 3 of the Sherman Act by combining and conspiring with retail and wholesale druggists in Richmond, Va., and the District of Columbia to maintain wholesale and retail prices of its products in areas which had no "fair trade" laws.¹ Parke Davis sold

¹ "Fair trade laws" is a name frequently given to state statutes which permit resale price maintenance agreements. Such contracts, under certain conditions, are exempt from the

to five wholesale druggists in the area involved and directly to some large retailers. Before 1956 Parke Davis had announced in its catalogues that it would deal only with wholesalers who adhered to Parke Davis's published resale price schedules and who, in turn, sold only to drug-retailers authorized by law to fill prescriptions, and who observed Parke Davis's suggested minimum retail prices. When certain retailers began advertising and selling Parke Davis products at lower than the suggested minimum prices, Parke Davis called on its wholesale and retail customers in the area and announced it would refuse to sell to any retailer who did not observe its suggested minimum prices, and would refuse to sell to any wholesaler who re-

(Continued from preceding page)

provisions of the Sherman Act under the Miller-Tydings Act (note 2 above) and from the antitrust laws generally by the McGuire Act, passed in 1952. This Act amended 15 U. S. C. A., 45(a), insofar as relevant here, to provide that:

"(2) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

* * *

"5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other."

sold to retailers who did not adhere to the minimum prices. Each wholesaler and retailer was informed that his competitors were being similarly advised. Retailers who would give no assurances of compliance were cut off by Parke Davis, not only as to the branded products being sold below the specified minimum price but as to all Parke Davis's products including drugs used in filling prescriptions.

Failing in these efforts to prevent retail price cutting, Parke Davis next attempted, by means of personal calls on wholesalers and retailers, to induce the retailers to refrain only from advertising discount prices. This plan was successful for a short time, but soon Parke Davis abandoned all efforts to prevent cut-price advertising and selling.

At the close of the Government's case, the District Court had dismissed the action on the ground that Parke Davis's activities were properly unilateral and sanctioned by law under the doctrine of *United States v. Colgate*, 250 U. S. 300. The Supreme Court reversed, again reaffirming the *Dr. Miles* case and pointing out, as it has been required to do many times over the years, the narrowness of the *Colgate* doctrine. At page 44, in discussing a manufacturer's unilateral refusal to deal with customers not adhering to its resale price policy, the Court said:

"True, there results the same economic effect as is accomplished by a prohibited combination to suppress price competition if each customer, although induced to do so solely by a manufacturer's announced policy, independently decides to observe specified resale prices. So long as *Colgate* is not overruled, this result is tolerated but only when it is the consequence of a mere refusal to sell in the exercise of the manufacturer's right 'freely to exercise his own independent discretion as to parties with whom he will deal.' When the manufacturer's actions, as here, go beyond mere

announcement of his policy and the simple refusal to deal, and he employs other means which effect adherence to his resale prices, this countervailing consideration is not present and therefore he has put together a combination in violation of the Sherman Act."

But, the Court said:

"The program upon which Parke Davis embarked to promote general compliance with its suggested resale prices plainly exceeded the limitations of the *Colgate* doctrine and under *Beech-Nut* and *Bausch & Lomb* effected arrangements which violated the Sherman Act. Parke Davis did not content itself with announcing its policy regarding retail prices and following this with a simple refusal to have business relations with any retailers who disregarded that policy. Instead Parke Davis used the refusal to deal with the wholesalers in order to elicit their willingness to deny Parke Davis products to retailers and thereby help gain the retailers' adherence to its suggested minimum retail prices. The retailers who disregarded the price policy were promptly cut off when Parke Davis supplied the wholesalers with their names. The large retailer who said he would 'abide' by the price policy, the multi-unit Peoples Drug chain, was not cut off. In thus involving the wholesalers to stop the flow of Parke Davis products to the retailers, thereby inducing retailers' adherence to its suggested retail prices, Parke Davis created a combination with the retailers and the wholesalers to maintain retail prices and violated the Sherman Act." (Id. 45.)

The Court noted that if the "resumed adherence" of one of Parke Davis's retail customers to the Parke Davis price schedule, following the interview between the customer's Vice President and Parke Davis's Assistant Branch Manager, showed that the two had entered into a price maintenance agreement "express, tacit or implied, such

agreement violated the Sherman Act without regard to any wholesalers' participation." (Id. 45, n. 6.)

White admits that certain of its resale prices are fixed but urges that such agreements have two limited applications which, in its view, have "proper purposes and effects":

"One is that if a distributor exercises his option to appoint dealers under him he must sell new White trucks to his dealers at the same prices as the prices at which The White Motor Company sells such new White trucks to its direct dealers. The purpose of this provision is to assure the defendant that the distributors' dealers and the defendant's direct dealers get an equal break pricewise. This is both fair and necessary if the defendant and its distributors are to have satisfied and efficient dealer organizations. It would be intolerable to have the defendant's direct dealers buying trucks at one price and the distributors' dealers buying the same trucks at a different price. The other very limited situation is that all distributors and dealers must give to 'national accounts', 'fleet account', and Federal and State governments and departments and political subdivisions thereof the same discounts on parts and accessories as the defendant gives to said 'national accounts', 'fleet accounts' and Federal and State governments and departments and political subdivisions thereof. The purpose of this provision is so that the defendant may be assured that 'national accounts', 'fleet accounts' and Federal and State governments and departments and political subdivisions thereof, which are classes of customers with respect to which the defendant is in especially severe competition with the manufacturers of other makes of trucks and which are likely to have a continuing volume of orders to place, shall not be deprived of their appropriate discounts on their purchases of repair parts and accessories from any distributor or dealer, with the result of becoming discontented with The White Motor Company and the treatment they receive with refer-

ence to the prices of repair parts and accessories for White trucks. It is common knowledge that probably nothing will make the owner of a motor vehicle so peeved as to be overcharged for repair parts and accessories." Defendant's Brief, pp. 54, 55.

The prohibitions of the Sherman Act cannot be evaded by good motives. *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20, 49 (1912); *Fashion Guild v. F. T. C.*, 312 U. S. 457, 468 (1941); *Associated Press v. United States*, 326 U. S. 1, 16 n. 15 (1945); *Radovich v. National Football League*, 352 U. S. 445, 453, n. 10 (1957).

Nor are combinations fixing maximum prices any less subject to the Sherman Act than those which fix minimum prices for they "cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U. S. 211, 213 (1951).

Defendant, as well as its competitors, must comply with the law. Defendant established its distribution system, and if weaknesses or "intolerable" situations develop, it is within its power to make necessary corrections or revisions in the system within the framework of the law.

Defendant states that there are no provisions in its contracts "with reference to the prices that the purchasing public shall pay for White trucks," that "the provisions governing the prices that distributors shall charge their dealers for trucks apply to less than 5 per cent of the trucks purchased by the distributors from The White Motor Company," and that "whatever restraints these limited provisions with regard to prices cause to competition or trade and commerce are trivial, theoretical and reasonable." (Defendant's Brief, pp. 55, 56.)

Volume of commerce is immaterial in Sherman Act cases. *United States v. Socony Vacuum Oil Co.*, 310 U. S. 150, 221 (1940); *United States v. McKesson & Robbins*,

351 U. S. 305, 310 (1956). It "is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. * * * Likewise irrelevant is the importance of the interstate commerce affected in relation to the entire amount of that type of commerce in the United States." *United States v. Yellow Cab Co.*, 332 U. S. 218, 225, 226 (1947).

That the contracts contain no provisions with reference to the specific prices which distributors, dealers or direct dealers shall charge consumers for White trucks has no bearing on the fact that wholesale truck and parts prices and parts prices to certain consumers are fixed by White.

While the defendant has not suggested that the resale price maintenance provisions under consideration fall within the Miller-Tydings or McGuire Act exemptions, it should be noted that the Supreme Court has held that a manufacturer which also acts as a wholesaler is not within those exemptions and therefore may not lawfully enter into resale price maintenance agreements with other wholesalers. *United States v. McKesson & Robbins*, 351 U. S. 305, 312 (1956).

Defendant concedes (Brief, p. 57) that this case does not involve any issue either of sales through bona fide agents of the manufacturer or of products manufactured or sold under patent licenses as in *United States v. General Electric Co.*, 272 U. S. 476 (1926). (See also provisions of contracts to the effect that distributors, dealers and direct dealers are not White's agents.)

In the Court's judgment, the provisions of defendant's distributor, dealer and direct dealer selling agreements, which prescribe resale prices and discounts of White trucks, equipment, accessories and parts, or any of them, constitute *per se* violations of Section 1 of the Sherman Act.

ALLOCATION OF TERRITORIES AND CUSTOMERS

The Government contends that since combinations and agreements fixing prices among competitors, which eliminate but a single element of competition, are illegal *per se*, the allocation of territories and of customers must also be illegal *per se*, as all elements of competition among the various selling units involved are thereby eliminated. (Government's Brief, p. 12.)

White's position is that, in order to market its trucks effectively in competition with the trucks of its competitors, it enters into contracts whereby its distributors agree to maintain sales rooms with stocks adequate to sell and service White trucks in their assigned territories, to properly display signs, and maintain adequate supplies of parts, and that the "territorial limitations do, in fact, not unreasonably or substantially restrict competition or trade and commerce but have both the purpose and effect of promoting the business and increasing the sales of White trucks in competition with The White Motor Company's powerful competitors." (Defendant's Brief, pp. 9, 10.)

White urges that to obtain distributors or dealers who are "able and energetic," they must "have the agreement of The White Motor Company that it will not itself step in and undercut [them] and that The White Motor Company will not allow any other of its distributors or dealers to come into the territory and scalp the market for White trucks therein." White further states:

"To obtain the maximum number of sales of trucks in a given area, The White Motor Company has to insist that its distributors and dealers concentrate on trying to take sales away from other competing truck manufacturers in their respective territories rather than on cutting each other's throats in other territories. If The White Motor Company is unable to pro-

cure the kind of vigorous and reputable distributors and dealers that will adequately represent it in their respective areas, its distributing organization of distributors and dealers will, slowly but surely, deteriorate and disintegrate, and as surely as the retirement of The White Motor Company from business would reduce competition in the manufacture and sale of trucks, so, just as surely, would the deterioration and disintegration of The White Motor Company's distributing organization reduce competition in the manufacture and sale of trucks. The plain fact is, as we expect to be able to show to the satisfaction of the Court at a trial of this case on the merits, that the outlawing of exclusive distributorships and dealerships in specified territories would reduce competition in the sale of motor trucks and not foster such competition."

The terms "exclusive contracts," "exclusive territories," or "exclusive dealerships," frequently are used to mean (1) agreements by a manufacturer with its distributors or dealers that the manufacturer will not sell to any others or to others within their respective "exclusive territories," or (2) (as in this case) agreements by distributors and dealers with their manufacturer or supplier that they will not sell to purchasers located outside their respective assigned "exclusive territories." It is most important to keep in mind these conflicting definitions because agreements in the first category have been upheld as reasonable when ancillary to the sale of goods for resale because they protect the vendee's property rights in his resale business from being destroyed or damaged by the actions of his vendor who is in a position to undersell, or establish a competitor of, his vendee. *United States v. Bausch & Lomb*, 321 U. S. 707; *United States v. Paramount Pictures*, 66 F. Supp. 323 (S. D. N. Y., 1946), judgment modified 334 U. S. 131 (1948); *Schwing Motor Co. v.*

Hudson Sales Co., 239 F. 2d 176 (C. A. 4, 1956); *Packard Motor Car Co. v. Webster*, 243 F. 2d 418 (C. A. D. C. 1957).

But the Supreme Court has consistently held that agreements in the second category, allocation of markets among competitors, violate the Sherman Act. Since this case involves only agreements in the second category, we should first consider *United States v. Addyston Pipe & Steel Co.*, 85 F. 271 (C. C. A. 6, 1898), judgment affirmed, decree modified, *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211 (1899). In that case, a number of manufacturers of cast iron pipe agreed to eliminate competition among themselves. This was accomplished in part by allocating business in certain cities or areas to specific manufacturers. Where several bids were required, as in the case of sales to Government agencies, the defendants agreed among themselves which company would be the low bidder. The trial court sustained defendants' demurrer but the Circuit Court of Appeals, in an opinion by Judge Taft, reversed and ordered a permanent injunction against the combination. Defendants admitted the existence of the agreements but claimed that they were necessary to avoid great losses and ruinous competition which would have carried prices far below a reasonable point. In language peculiarly applicable to this case the Supreme Court asked and answered several questions:

"If dealers in any commodity agreed among themselves that any particular territory bounded by state lines should be furnished with such commodity by certain members only of the combination, and the others would abstain from business in that territory, would not such agreement be regarded as one in restraint of interstate trade? If the price of the commodity were thereby enhanced, (as it naturally would be,) the character of the agreement would be still

more clearly one in restraint of trade. Is there any substantial difference where, by agreement among themselves, the parties choose one of their number to make a bid for the supply of the pipe for delivery in another State, and agree that all the other bids shall be for a larger sum, thus practically restricting all but the member agreed upon from any attempt to supply the demand for the pipe or to enter into competition for the business? Does not an agreement or combination of that kind restrain interstate trade, and when Congress has acted by the passage of a statute like the one under consideration, does not such a contract clearly violate that statute?" (Id. 241.)

The Court went on to hold that the contract and combination violated the statute.

In *Apex Hosiery Co. v. Leader*, 310 U. S. 469 (1940), Justice Stone, discussing the relation of the Sherman Act to the common law concepts of restraints of trade, noted that agreements to "divide marketing territories [and] apportion customers," along with agreements to fix prices and restrict production, were "illegal and were unenforceable at common law." (Id. 497.) And, at page 493:

"The end sought [by enactment of the Sherman Act] was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury."

United States v. National Lead Co., 63 F. Supp. 513 (S. D. N. Y., 1945), affirmed 332 U. S. 319 (1947), involved a world-wide cartel controlling patents and technological information pertaining to the manufacture of titanium compounds. In maintaining and carrying out the purpose of the cartel, to suppress competition among its members, the parties allocated territories among them-

selves and refused to license potential customers or classes of customers under the patents except on terms agreed upon by the combination. Of this the District Court said, at page 524:

"This is a case where if not the sole, at least one of the principal, objects was 'to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster.' *United States v. Addyston Pipe & Steel Co.*, 6 Cir., 1898, 85 F. 271, 282, 283; * * *."

and, at page 523:

"No citation of authority is any longer necessary to support the proposition that a combination of competitors, which by agreement divides the world into exclusive trade areas, and suppresses all competition among the members of the combination, offends the Sherman Act."

In *United States v. Imperial Chemical Industries*, 100 F. Supp. 504 (S. D. N. Y., 1951), after finding that the defendants had conspired to avoid and prevent competition among themselves and with others by dividing markets in restraint of interstate and foreign commerce, the Court said, at pages 592, 593:

"In the face of this finding, the law is crystal clear: A conspiracy to divide territories, which affects American commerce, violates the Sherman Act.

* * * * *

"Territorial division is 'in restraint of trade or commerce,' no less than price fixing. It involves 'the denial to commerce of the supposed protection of competition.' *United States v. Aluminum Co. of America*, 2 Cir., 148 F. 2d 416, 428. There is no intimation in any decision that elimination of competition is to be given a more favorable judicial consideration when achieved by the route of territorial di-

vision rather than by way of price fixing, or that proof of industry domination is required in one case though not required in the other." (Id. 593.)

Defendant has cited a number of cases which are claimed to stand for the proposition that a manufacturer's agreements with its distributors or dealers which restrict their sales territories are lawful.

The first of these cases, *Phillips v. Lola Portland Cement Co.*, 125 F. 593 (C. C. A. 8, 1903), cert. den. 192 U. S. 606 (1904), involved a single sale of cement which the defendant jobber had agreed not to ship or sell outside the State of Texas. Sued for breach of contract in refusing to accept and pay for some of the cement, defendant alleged that the agreement violated the Sherman Act and was therefore unenforceable. The agreement was held not to have had any direct or substantial effect upon competition or trade among the states, that other manufacturers competing with plaintiff were free to set their own prices and select their customers, and that, if the agreement did have the effect of restraining defendant from competing with other jobbers and manufacturers beyond the State of Texas, "this restriction was not the chief purpose or the main effect of the contract of sale, but a mere indirect and immaterial incident of it." (Id. 595.) *Phillips* obviously has no bearing on the instant case which is a direct attack on a system of restraints which are in continual operation, not an action for breach of a single contract of sale.

Cole Motor Car Co. v. Hurst, 228 F. 280 (C. C. A. 5, 1915), cert. den. *Tillar v. Cole Motor Car Co.*, 247 U. S. 511 (1918), involved an agent or consignee of the plaintiff automobile manufacturer being sued for money due. The consignee defended on the ground that the contract was illegal in that it restricted the territory in which he could

sell. The antitrust question was raised collaterally and involved only the relationship between a manufacturer and a single outlet. Moreover, while White quoted extensively from the *Cole* opinion, at pages 12 and 13 of its brief, it omitted from the context the following two sentences showing that the relationship between the parties was that of principal and agent, not buyer and seller, making the case clearly inapplicable to White:

"It will be seen that it was not a contract which conveyed title to Hurst, and brought his control of the machines under the operation of the Texas law. Surely the *Cole* Company had the right to determine that its agents should sell its cars at its own price."
(Id. 284.)

Sinclair Refining Co. v. Wilson Gas and Oil Co., 52 F. 2d 974 (W. D., S. C., 1931) was also a suit for goods sold. The Court rejected and did not consider a counterclaim based on conduct of defendant which allegedly violated the Sherman Act.

The Federal Trade Commission cases cited by defendant, *B. S. Pearsall Butter Co. v. FTC*, 292 F. 120 (C. C. A. 7, 1923) and *General Cigar Co., Inc.*, 16 FTC, dec. 537 (1932), do not bear on the issues of this case.

Another Commission ruling cited by defendant is *Columbus Coated Fabrics Corp.*, CCH Trade Reg. Rep., 1959-60, p. 36,963, a proceeding under Section 5 of the Federal Trade Commission Act (15 U. S. C. A., 45). The complaint charged a manufacturer and two of its distributors with conspiring to restrain competition by:

- (1) Establishing and maintaining uniform fixed suggested dealer resale prices;
- (2) Establishing and maintaining exclusive sales territories for distributors;
- (3) Threatening to, and boycotting certain dealers."
(Id. 36,963.)

The hearing examiner dismissed charges 1 and 2 above but entered a cease and desist order as to charge 3. The dismissal of charges 1 and 2 resulted from finding that there were no agreements embracing such terms, not upon a conclusion that such agreements would be lawful as would be inferred from defendant's brief. Chairman Gwynne, speaking for the Commission, stated, at page 36,964:

"There is no evidence of any agreement, either written or oral, as to these allocations. Nor is there any substantial evidence that Columbus made efforts to require observance or to police the unilateral arrangements it made. * * *. It appears also that any distributor or dealer may sell Wall-Tex anywhere he wishes. He can also choose his own customers and is free to handle competing products. In fact, many do handle such products.

* * * * *

"There is no evidence of any agreement between distributors to enforce Columbus' suggested prices or to enforce their own. Nor is there evidence of agreement among dealers to agree to or to enforce either."

United States v. Paramount Pictures, 66 F. Supp. 323 (S. D. N. Y., 1946); judgment modified, 334 U. S. 131 (1948), involved an issue of the *per se* illegality of agreements (called "clearances") by motion picture distributors with exhibitors not to license other exhibitors in their respective territories to show certain films until after the lapse of specified numbers of days. This case involved restrictions of a different nature from the one at bar, for, as the three-judge District Court held, the granting of clearances when "not accompanied by a fixing of minimum prices, or not unduly extended as to area or duration, affords a fair protection to the interests of the licensee without unreasonably interfering with the interests of the public." (Id. 341.)

Boro Hall Corp. v. General Motors Corp., 124 F. 2d 822 (C. C. A. 2. 1942), rehearing denied 130 F. 2d 196, cert. den. 317 U. S. 695 (1943), involved the issue of an automobile manufacturer's requiring that one of its dealers not locate its used car sales outlet except in an area to be agreed upon between the parties, so as not to unduly prejudice other dealers of that manufacturer and distributor. The Court of Appeals affirmed the dismissal of the cause of action as not stating a claim under the Sherman Act. The agreement, or proposed agreement, at issue in *Boro Hall* related only to the location of a place of business and, as the Court noted:

"The plaintiff was always at liberty to sell used cars outside its 'zone of influence' and was only forbidden to establish a used car outlet, lot or salesroom outside this zone." (Id. 197.)

Defendant also relies on *Schwing Motor Co. v. Hudson Sales Co.*, 138 F. Supp. 899 (D. C. Md., 1956), affirmed *per curiam* 239 F. 2d 176 (C. A. 4, 1956), and *Packard Motor Car Co. v. Webster*, 243 F. 2d 418 (C. A. D. C., 1957). Both were treble damage actions under Sections 1 and 2 of the Sherman Act but neither involved issues other than refusal to deal. The *Schwing* case was instituted by two former Hudson automobile dealers who charged that the manufacturer entered into an agreement with a third dealer whereby the manufacturer refused to renew plaintiffs' dealer franchises and refused to sell them Hudson automobiles, thus giving the third dealer a "virtual monopoly" of the sale of Hudson automobiles and parts in the City of Baltimore. On motion of defendants, the amended complaint was dismissed. The Court held that the defendant manufacturer was within its rights in exercising discretion as to the parties with whom it wished to deal, citing the *Colgate* case, and others:

"A manufacturer may prefer to deal with one person rather than another, and may grant exclusive contracts in a particular territory." (138 F. Stpp. 903.)

The Court, in *Schwing*, recognized that there had been no allegation of a "horizontal conspiracy between competitors" (Id. 905), and commented that if such had been the case "[o]f course the agreement would be invalid * * *" (Id. 906.)

The *Packard* case was brought by a former Baltimore Packard automobile dealer against the manufacturer and two of its officers, charging that Packard had agreed with another dealer, Zell, to terminate the franchises of all other Packard dealers in Baltimore to give Zell an exclusive contract for that area. The District Court submitted the case to the jury, which returned a verdict for the plaintiff. The Court of Appeals reversed, expressing agreement with the *Schwing* decision, above, and holding that the "fact that any other dealers in the same product of the same manufacturer are eliminated does not make an exclusive dealership illegal; it is the essential nature of the arrangement. The fact that Zell asked for the arrangement does not make it illegal." (243 F. 2d 421.) It is apparent that the "exclusive contracts" and "exclusive dealerships" in *Schwing* and *Packard* are contracts in which the vendors (in those cases the manufacturers) agreed with certain of their respective dealers that they would not sell to others or appoint other dealers or agents within specified areas or distances in relation to the dealers' places of business but that those terms do not apply to the agreements at issue in the instant case whereby vendees (distributors and dealers) agree with their vendors (manufacturer or distributors) not to resell goods purchased to certain classes of customers or outside of their assigned territories.

Reliable Volkswagen v. Worldwide Automobile Corp., 182 F. Supp. 412 (D. C. N. J., 1960), charged breach of contract, fraud and other wrongful acts including violation of the Sherman Act. Plaintiff alleged that a foreign manufacturer, its exclusive United States importer, and others, agreed among themselves and with other distributors to sell Volkswagen products only to franchised Volkswagen dealers; that the defendants agreed to limit sales to franchised dealers within the respective exclusive sales territories of the distributors, and that as a result of these agreements plaintiff has been unable to purchase Volkswagen products. The case was before the District Court on defendants' motion to dismiss or for summary judgment. The Court dismissed the eighth cause of action, which had set forth the above Sherman Act allegations. Defendant herein emphasizes Circuit Judge Forman's comment that he was "not persuaded that this system constitutes a *per se* violation of the Sherman Act." (Id. 427.)

In dismissing the charge, the Court relied, to some extent, on the *Schwing* and *Packard* cases (discussed above and found to be inapplicable to the instant case) and on *United States v. Bitz*, 179 F. Supp. 80 (S. D. N. Y., 1959), which decision was later reversed. *United States v. Bitz*, 282 F. 2d 465 (C. A. 2, 1960). But the real basis for the Court's dismissal of the eighth cause of action in *Reliable Volkswagen* appears to have been not upon a consideration of the legality of defendants' distribution system, but upon its conclusion that the cause of action failed to allege a public injury "or even a private injury," 182 F. Supp. 425, and that it alleged "only a refusal to deal for which in this context the antitrust law provides no remedy." (Id. 427.) Since this construction made dismissal mandatory under the *Colgate* doctrine, the case has no application to *White*.

For the reasons indicated, defendant's authorities do not sustain the legality of the territorial allocations of its marketing system.

White defends the agreements of its distributors, dealers and direct dealers not to sell to anyone for resale (except to White or other White approved distributors and dealers) as being necessary to "assure itself by the provisions of its contracts that the persons attempting to sell White trucks to the purchasing public shall be men who will deal honestly and fairly with the purchasing public; * * *." (Defendant's Brief, p. 36.)

The provisions of its selling agreements prohibiting distributors, dealers and direct dealers from selling White trucks to Federal or State Governments, or departments or political subdivisions thereof, are justifiable, according to White, because they do not "restrict the competition for government business but on the contrary increase[s] such competition by enabling The White Motor Company to compete for the business on equal terms with, and under as favorable circumstances as, competing manufacturers of trucks." (Defendant's Brief, p. 37.)

The cases cited by defendant, as supporting customer allocation, either involved single contracts or did not present Sherman Act issues and therefore have no bearing on this case.

Wilder Mfg. Co. v. Corn Products Co., 236 U. S. 165 (1915) was an action for goods sold, which started in the State Courts of Georgia. The purchaser, Wilder, defended on the ground that plaintiff corporation was organized to violate the federal antitrust laws, hence had no legal existence, and that the purchase contract was unenforceable because of a clause to the effect that the goods sold were for defendant's own use and not for resale. The trial court struck out the answer as constituting no defense, the

Georgia Court of Appeals affirming. The Supreme Court held that the contract of sale was not inherently illegal because of that clause, and others, so as to bar recovery for the purchase price. There was no issue, and no expression of opinion by the Court, as to whether the resale restrictions constituted a violation of Section 1 of the Sherman Act.

In *Green v. Electric Vacuum Cleaner Co.*, 132 F. 2d 312 (C. C. A. 6, 1942), plaintiff manufacturer brought an action for patent and trademark infringement against a rebuilder of vacuum cleaners. As a defense it was asserted that plaintiff was violating the antitrust laws in attempting to prevent defendant from obtaining its parts. Affirming judgment for the plaintiff, the Court held that directives by the plaintiff to its dealers not to resell its patented parts to persons engaged in rebuilding traded-in or junked cleaners were not contracts in unreasonable restraint of trade under the antitrust laws.

P. Lorillard Co. v. Weingarden, 280 F. 238 (W. D. N. Y., 1922), involved a single transaction wherein plaintiff sought to enforce a restrictive covenant against sale within the United States of a quantity of cigarettes sold to defendant at a special price because of their inferior quality. Plaintiff contended that their sale in this country would damage its reputation. The Court held the covenant to be reasonable and that it presented no question of Sherman Act violation.

Fosburgh v. California & Hawaiian Sugar Refining Co., 291 F. 29 (C. C. A. 9, 1923), also involved a single transaction wherein the Court held to be reasonable, and not in violation of the Sherman Act, contractual provisions enjoining the resale of certain sugar purchased, where such provisions had been made at the suggestion of the

United States Government because of the World War I sugar shortage.

In *United States v. Newbury Manufacturing Co.*, 36 F. Supp. 602 (D. Mass., 1941), the Court held to be reasonable a restriction by a vendor, the United States Government, to the effect that certain goods sold be disposed of only in foreign countries.

Chicago Sugar Co. v. American Sugar Refining Co., 176 F. 2d 1 (C. A. 7, 1949), cert. den. 338 U. S. 948 (1950), was an action instituted by a sugar distributor against a processor under the Clayton Act and the Robinson Patman Act. The Court held that long term requirements contracts between a sugar refiner and a manufacturer, whereby the manufacturer agreed to use the sugar solely for its own purposes and not to resell it, was not harmful to competition or in restraint of trade. No Sherman Act question was involved.

In *Bascom Launder Corp. v. Telecoin Corp.*, 204 F. 2d 331 (C. A. 2, 1953), cert. den. 345 U. S. 994 (1953), the issue was over an instruction given by the District Judge to the jury in a treble damage action. He had stated that a contract whereby a manufacturer appointed a single distributor to sell to a certain class of customers, and agreed to appoint no other, "amounted to a contract, combination and conspiracy in restraint of trade or commerce in violation of the Sherman Act as a matter of law." (Id. 334.) The Court of Appeals reversed, holding that the instruction had amounted to a directed verdict for the plaintiff, whereas the question was for the jury to decide.

Roux Distributing Co., Federal Trade Commission Dkt. 6636, CCH Trade Reg. Rep. (FTC Complaints, Orders, Stipulations, 1959-1960), par. 27,855, p. 36,923, was a decision by the Commission arising out of an action

under Section 5 of the Federal Trade Commission Act, 15 U. S. C. A., 45. Respondent was charged with requiring its wholesale customers to agree to limit their sales to certain classes of purchasers. The statute condemns unfair methods of competition and unfair or deceptive acts or practices in commerce. The Commission held that "a violation of Section 5 is not shown unless the record contains some evidence of the competitive effect of the practices," (Id. 36,925), and dismissed the complaint after finding no conclusive evidence of previous competition among respondent's customers, which the challenged agreements allegedly had removed. No issues involving the Sherman Act were presented.

White asserts that it does not dominate the truck market and that "the relevant market is not a market for White trucks, as plaintiff seems to assume in its brief, but is the market for trucks of all makes," (Defendant's Brief, p. 70), citing *United States v. DuPont*, 351 U. S. 377 (1956). But *DuPont* was an action under Section 2 of the Sherman Act charging monopolization or attempts to monopolize which necessarily involved questions of relevant market. On the other hand, *Dr. Miles v. Park*, 220 U. S. 373, *United States v. Bausch & Lomb*, 321 U. S. 707, *United States v. McKesson & Robbins Co.*, 351 U. S. 305, *United States v. Parke, Davis*, 362 U. S. 29, to cite but a few cases, make it abundantly clear that market control is not a material factor in cases involving resale restrictions and that resellers of identical products of a single manufacturer are regarded as being in competition with one another with respect to such sales. See also *United States v. Bausch & Lomb*, 45 F. Supp. 387, 397 (S. D. N. Y., 1942).

White's defense is based on the assumption that a process of justification may be employed to remove from the scope of the Sherman Act restraints which, by their

inherent nature, have a direct and immediate effect upon interstate commerce. This theory was discussed at length and rejected in *Standard Oil Co. v. United States*, 221 U. S. 1 (1911), wherein the Court held that a finding that a contract or combination in restraint of trade has a direct and immediate effect on interstate commerce, and the application of the rule of reason, were one and the same thing. It stated, at page 67:

"The confusion which gives rise to the question results from failing to distinguish between the want of power to take a case which by its terms of the circumstances which surrounded it, considering among such circumstances the character of the parties, is plainly within the statute, out of the operation of the statute by resort to reason in effect to establish that the contract ought not to be treated as within the statute, and the duty in every case where it becomes necessary from the nature and character of the parties to decide whether it was within the statute to pass upon that question by the light of reason."

Individually, White and any of its distributors, dealers or direct dealers might refuse to sell to certain customers or classes of customers but the Sherman Act makes concerted refusal to deal, as in this case, an offense. *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U. S. 211, 214 (1951).

CONCLUSION

The Sherman Act does not sanction the suppression by a manufacturer of competition among its purchasers or subpurchasers, *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 452 (1940); nor does it permit limitation on sales to certain customers or classes of customers by vertical combination, *Dr. Miles v. Park*, 220 U. S. 373, 400 (1911); *United States v. Bausch & Lomb Co.*, 321 U. S. 707, 723 (1944); especially when part of a scheme to fix

or maintain resale prices, *United States v. Parke, Davis & Co.*, 362 U. S. 29, 44, 45 (1960). White can fare no better in a system of identical contracts with its distributors and dealers allocating territories and customers than could the distributors and dealers themselves "if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other." *Dr. Miles v. Park*, 220 U. S. 373, 408 (1911).

In *Associated Press v. United States*, 326 U. S. 1, 15 (1945), the Supreme Court said:

"While it is true in a very general sense that one can dispose of his property as he pleases, he cannot 'go beyond the exercise of this right, and by contracts or combinations express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.' *United States v. Bausch & Lomb Co.*, 321 U. S. 707, 722. The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete."

Within legal limits, White may contract with its distributors, dealers or other customers with respect to the maintenance of certain standards and policies. Also, within legal limits, White may simply announce its policies regarding its customers' resale practices and terminate its business dealings with those who do not comply. *United States v. Colgate*, 250 U. S. 300 (1918); *United States v. Parke, Davis & Co.*, 362 U. S. 29, 44 (1960). But the contractual provisions at issue in this case do not relate to such matters as pertain only to White's distributors' and dealers' good will in the community, location and appearance of show rooms, maintenance of adequate repair and service facilities, employment of courteous and skilled

technical and sales personnel, compliance with local laws and regulations, maintenance of good credit ratings, or assumption of primary responsibility for sales coverage of specified areas and classes of customers. At issue here is a system of agreements involving White and all distributors, dealers and direct dealers, in its nation-wide distribution system, which limit and suppress competition by fixing certain resale prices of White trucks and parts and by dividing markets, customers and classes of customers, including agreements which allow only White to bid on sales of trucks to Federal, State and local governmental agencies.

In *Park v. Hartman*, 153 F. 24 (C. C. A. 6, 1907), appeal dismissed 212 U. S. 588, Circuit Judge (later Mr. Justice) Lurton aptly described the effects of a system of illegal resale restrictions imposed by a manufacturer, resembling those in the instant case, in the following manner:

"Thus all room for competition between retailers, who supply the public, is made impossible. If these contracts leave any room at any point of the line for the usual play of competition between the dealers in the product marketed by complainant [the manufacturer], it is not discoverable. Thus a combination between the manufacturer, the wholesalers and the retailers to maintain prices and stifle competition has been brought about." (Id. 42.)

The foregoing passage was quoted with approval by the Supreme Court in *Dr. Miles v. Park*, 220 U. S. 373, at page 400.

The Supreme Court, in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150 (1940), at pages 221, 222, condemned all price tampering conspiracies as violating the Sherman Act.

"Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress."

The subject provisions of defendant's selling agreements deprive purchasers or consumers, including all Federal, State and local governments, "of the advantages which they derive from free competition," *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501 (1940), in the field of medium and heavy duty trucks in the United States and the District of Columbia, not only by eliminating competition among White's own distributors, dealers and direct dealers, but also by restraining and preventing their competing with, or bidding against, other truck manufacturers, and their respective distributors and dealers, outside their assigned sales areas.

On the basis of the facts found herein, as to which there is no genuine issue, the Court is of the opinion that the plain purpose and effect of the challenged provisions of White's selling agreements is to eliminate and suppress competition by fixing certain resale prices of White trucks

and parts, by allocating customers and by dividing sales territories among competitors or potential competitors; that the contracts containing such provisions directly affect interstate commerce and, as a matter of law under the authorities cited and discussed above, constitute contracts and combinations which, on their face, unreasonably restrain trade and commerce among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Sherman Act. Accordingly, the Government's motion for summary judgment will be sustained and the Court will issue an appropriate decree.

Entry of summary judgment in an antitrust case is both proper and desirable where the restraints complained of are clearly unreasonable, involving *per se* violations of the Sherman Act. *Associated Press v. United States*, 326 U. S. 1, 5, 6; *International Salt Co. v. United States*, 332 U. S. 392, 396 (1947). In sustaining the District Court's granting of summary judgment for the Government in *Northern Pacific Railway Co. v. United States*, 356 U. S. 1 (1958), the Supreme Court said, at pages 4 and 5:

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the Act is competition. And to this end it prohibits 'Every contract, combination * * * or conspiracy, in restraint of trade or commerce among the several States.' Although this prohibition is literally all-encompassing, the courts have construed it as pre-

cluding only those contracts or combinations which 'unreasonably' restrain competition. *Standard Oil Co. of New Jersey v. United States*, 221 U. S. 1; *Chicago Board of Trade v. United States*, 246 U. S. 231.

"However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, aff'd 175 U. S. 211, group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U. S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U. S. 392."

See also *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U. S. 127 (1961).

There is nothing in the record to indicate that the defendant herein had any sinister motives in executing and maintaining the contractual provisions which the Court has determined to be unlawful on the basis of well established authority. Again referring to *United States v. Socony-Vacuum Oil Co.*, supra, at page 222 (page 40 of

this memorandum), defendant's arguments as to the business necessity of agreements of this type must be addressed to the Congress rather than to the Courts.

The traditional function of the trial Court is to interpret and apply the law, rather than to declare the law. Thus, it may frequently occur that a judge is required to render a decision that does not necessarily reflect his personal attitude or philosophy upon the subject. Upon the basis of the foregoing careful analysis and findings of fact as to which there is no genuine issue and the conclusions of law herein contained, my function as a judge is properly performed.

The Government will submit a proposed decree.

GIRARD E. KALBFLEISCH

United States District Judge

APPENDIX A

ANNUAL SALES OF WHITE TRUCKS BY DEFENDANT

(First 7 Mos.)

Classes of Customers	1955 Amount	1956 Amount	1957 Amount	1958 Amount
U. S. Government	\$ 770,000	\$ 473,000	\$13,862,000	\$18,857,000
Government of D. C.	3,000	—	—	6,000
All Customers in D. C., except Gov't of D. C.	126,000	144,000	215,000	22,000
State & Local Gov't & their Agencies	814,000	839,000	1,235,000	1,020,000
National Accounts	3,725,000	4,989,000	5,237,000	3,204,000
Fleet Accounts	37,084,000	43,804,000	42,392,000	28,860,000
Distributors	52,249,000	53,862,000	52,260,000	35,117,000
Direct Dealers	387,000	2,273,000	218,000	81,000
Indirect Dealers	—	—	—	—
Fire Truck Buyers	8,000	—	10,000	13,000
All Other Buyers in U. S.	7,822,000	9,726,000	12,042,000	5,519,000
Total Sales by Defendant	\$102,928,000	\$116,110,000	\$127,471,000	\$92,699,000

APPENDIX II
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CIVIL ACTION No. 34,593

UNITED STATES OF AMERICA

Plaintiff

v.

THE WHITE MOTOR COMPANY

Defendant

FINAL JUDGMENT

This cause having come on to be considered upon a motion by the plaintiff for a summary judgment against the defendant, The White Motor Company, the Court having determined, upon consideration of the record and the briefs filed by the plaintiff and defendant, that there is no genuine issue between the parties as to any material fact, and the Court having filed its memorandum herein on the 21st day of April, 1961,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I.

The Court has jurisdiction of the subject matter hereof and of the parties hereto and plaintiff's motion for summary judgment is sustained.

II.

As used in this Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and existing under the laws of the

State of Ohio, with its principal place of business at Cleveland, Ohio;

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

(C) "Distributor" means any person engaged, in whole or in part, in the purchase from the defendant of trucks and parts and in the sale thereof at wholesale or at retail in the United States of America, including those persons heretofore designated by the defendant as "distributor" or "franchised distributor."

(D) "Dealer" means any person engaged, in whole or in part, in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as "key dealer," "metropolitan dealer," "dealer," "direct key dealer," "direct metropolitan dealer," and "direct dealer."

III.

The defendant has entered into contracts and combinations with its dealers and distributors which unreasonably restrain trade and commerce in the distribution and sale of trucks and parts among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, 15 U. S. C. A., 1, 3.

IV.

The provisions in the contracts between and among the defendant and its distributors and dealers,

- (A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and
- (B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant,

are hereby adjudged unlawful, illegal, null and void.

V.

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer, or any other person:

(A) To limit, allocate or restrict the territories in which, or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks;

(B) To fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of trucks or parts to any third person.

VII.

(A) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to take all necessary action to effect the cancellation of

each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Defendant is ordered and directed, within thirty (30) days after the effective date of this Final Judgment, to mail a copy of this Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45) days after the effective date of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section VII.

VIII.

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant, and without restraint or interference from the defendant, to interview, regarding any such matters, officers or employees of the defendant, who may have counsel present.

No information obtained by the means provided in this Section VIII shall be divulged by any representative

of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

X.

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XI.

The injunctions provided for hereinabove and all executory action under this Final Judgment shall not become effective or operative until sixty (60) days after the date of the entry of this Final Judgment; and, in the event an appeal is prosecuted by the defendant, all injunctive and executory actions provided for herein shall be stayed and suspended pending the final disposition of such appeal, conditioned upon the defendant's entering into an appeal and supersedeas bond in the amount of Two Hundred and Fifty Dollars (\$250.00).

GIRARD E. KALBFLEISCH

United States District Judge

Date: Sep 5 1961

APPENDIX III.

Sections 1, 3 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 3 and 4, commonly known as the Sherman Antitrust Act:

"§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any com-

bination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, Title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282."

"§ 3. Trusts in Territories or District of Columbia illegal; combination a misdemeanor

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, ch. 647, § 3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282."

"§ 4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 of this title; and it shall be the duty of

the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909."

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 619

WHITE MOTOR COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, the United States moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final judgment of the district court in a civil antitrust case, entered on the government's motion for summary judgment. The court held that provisions in franchise contracts between appellant and its distributors and dealers, limiting the areas in which, the persons to whom, and the prices at which, such distributors and dealers may resell appellant's products, were illegal per se in violation of Sections 1 and 3 of the Sherman Act. The

judgment enjoined appellant from entering into and enforcing any such contractual provisions.

The basic facts, as found by the court, are undisputed (J.S. 21).

Appellant is one of the leading United States manufacturers of medium to heavy-duty trucks; its annual sales of trucks and truck parts exceed \$100,000,000 (J.S. 23). Appellant sells its products to the ultimate consumers through distributors (who resell at both wholesale and retail) and through various categories of retail dealers who purchase the trucks and parts either from it or from distributors (J.S. 22). At the time of this case, appellant had approximately 250 distributors and 110 dealers (J.S. 24). Appellant also sells directly to certain consumers and to various government agencies (J.S. 23).

Appellant's distributors and dealers operate under standard form selling agreements. Under these agreements, the distributor or dealer (1) is granted the exclusive right to sell in a designated territory, (2) agrees to sell only to purchasers having a place of business or purchasing headquarters in that territory, (3) agrees not to sell for resale or to any federal or State government or subdivision thereof, or, in some instances, not to certain designated customers (except with appellant's permission), and (4) is required to sell at prices and discounts fixed by appellant.¹ The selling agreements provide that the distributors and dealers are not agents of the appellant (J.S. 29, 32).

¹ The pertinent provisions of the agreements are set forth in the opinion of the district court (J.S. 25-32).

Appellant admitted most of the allegations in the government's complaint, but denied that it had violated the Sherman Act (J.S. 21). Following pre-trial discovery proceedings, the government moved for summary judgment on the basis of the pleadings, appellant's answers to interrogatories, the deposition of appellant's Secretary, and various documents the Secretary identified during the deposition (J.S. 21). Appellant filed no opposing affidavits, exhibits, or depositions, but set forth in its brief the ultimate facts which it proposed to prove at a trial. Among those facts were: that the truck industry is "extremely competitive," that the restrictive clauses in appellant's franchise contracts enable it to compete more effectively against its rivals, and that appellant "will lose many competent distributors and dealers" if it is not permitted to guarantee them freedom from competition by other White dealers in their respective territories (J.S. 35-36).

The court granted the government's motion for summary judgment (J.S. 67). It held (J.S. 36; see J.S. 66) that there was "no genuine issue as to any material fact upon which the Government relies." After reviewing the provisions of the various agreements and the pertinent judicial precedents (J.S. 24-63), the court concluded (J.S. 66-67) that the "plain purpose and effect" of the challenged provisions in appellant's selling agreements "is to eliminate and suppress competition by fixing certain resale prices of White trucks and parts, by allocating customers and by dividing sales territories among competitors

or potential competitors; that the contracts containing such provisions directly affect interstate commerce and, as a matter of law under the authorities cited and discussed above, constitute contracts and combinations which, on their face, unreasonably restrain trade and commerce among the several states of the United States and the District of Columbia, in violation of Sections 1 and 3 of the Sherman Act." It ruled (J.S. 36) that the facts which appellant offered to prove at the trial "have no materiality to the issues presently before the Court, namely, whether the admitted facts disclose *per se* violations of the Sherman Act."

The court's judgment (J.S. 70-74) adjudged that the provisions in appellant's selling agreements which "impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks," and which "obligate distributors and dealers to sell trucks and parts at prices or discounts, established by the defendant," are "unlawful, illegal, null and void." The court enjoined appellant from "entering into, adhering to, maintaining, enforcing or claiming any rights under" such provisions (J.S. 72).

ARGUMENT

I

The district court held that the provisions in appellant's distributor and dealer franchise agreements limiting the territories in which, and the persons to whom, such distributors and dealers may sell, are on their face unreasonable restraints of trade in

violation of Sections 1 and 3 of the Sherman Act; and that the economic justification which appellant offered for such restrictive provisions was therefore immaterial.² The appeal does not present a substantial question because the issues have all been resolved, against appellant's contentions, by prior decisions of this Court, particularly by *United States v. Bausch & Lomb Co.*, 321 U.S. 707.

A. Bausch & Lomb involved the validity, under Sections 1 and 3 of the Sherman Act, of the distribution system of Soft-Lite eyeglass lenses. Soft-Lite sold its lenses to wholesalers who, in turn, sold them to retailers (p. 710). "Soft-Lite's wholesalers were allowed to resell only to retailers who held licenses from Soft-Lite" (p. 714). "Soft-Lite indicated to the wholesalers the prices to be received by them from retailers by means of published price lists," and "the retailer[s were] required to maintain prevailing local price schedules" (p. 715).

The district court held that Soft-Lite had contracted and conspired with wholesalers and retailers to violate the Sherman Act

* * * (b) by entering into so-called "license" agreements with optical retailers which provide that said retailers will sell such lenses only to the public; (c) by entering into agreements with wholesale customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated

² Appellant does not challenge the district court's holding that the price maintenance provisions in its selling agreements are illegal (J.S. 8-9).

as "licensees" by the defendant Soft-Lite Lens Company, Inc. * * * [p. 717].

In affirming the holding that such agreements were illegal, this Court stated (p. 721, emphasis added):

Soft-Lite is the distributor of an unpatented article. It sells to its wholesalers at prices satisfactory to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or *the persons to whom its purchaser may resell*, except as the seller moves along the route which is marked by the Miller-Tydings Act. * * * Even the additional protection of a copyright * * *, or of a patent * * *, adds nothing to a distributor's power to control prices of resale by a purchaser. *The same thing is true as to restriction of customers.* * * *

The Court further pointed out (p. 723, emphasis added):

So far as the wholesalers are concerned, Soft-Lite and its officers conspired and combined among themselves and with at least some of the wholesalers to restrain commerce by designating selected wholesalers as sub-distributors of Soft-Lite products, by fixing resale prices and *by limiting the customers of the wholesalers to those recommended by the wholesalers and approved by Soft-Lite—all in violation of the Sherman Act.* * * *

Thus, *United States v. Bausch & Lomb* plainly governs the present case. The efforts to fix the re-

sale price are indistinguishable; in each instance the manufacturer required the distributor to agree to adhere to the resale prices which the manufacturer established.³ In the *Bausch & Lomb* case the distributor was required to limit his customers to persons approved by Bausch & Lomb whereas appellant defines the limitation also by a geographical restriction; but the distinction is irrelevant because the basic vice of both schemes is the same—each involves an unlawful attempt by a manufacturer to limit competition in the distribution of its product after it has sold it to others. *Bausch & Lomb* makes it clear that such an attempt is illegal whether its purpose is to “limit * * * the price at which or the persons to whom its purchaser may resell * * *” (321 U.S. at 721). It is immaterial whether the ultimate purpose of controlling the customers to whom the products were resold is, as in *Bausch v. Lomb*, to effectuate a direct price-fixing scheme or, as appears in the present case, to eliminate competition for customers.

The holding in *Bausch & Lomb* that a distributor who parts with all interest in its product cannot control “the persons to whom its purchaser may resell” was not novel. It rested upon this Court’s decision in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373. In that case the Court held that agreements by which a drug manufacturer required its wholesalers and retailers to resell at prices it fixed constituted illegal restraints of trade. The Court

³ As noted (note 2, p. 5, *supra*), appellant does not challenge the holding that the price-fixing aspects of its distribution system are illegal.

pointed out that "a general restraint upon alienation is ordinarily invalid" (p. 404); that "[t]he agreements are designed to maintain prices, after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them" (p. 407); and that the manufacturer "having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic" (p. 409). The Court quoted (pp. 404-405) Lord Coke's statement that "if a man be possessed of a lease for years, or of a horse or of any other chattel * * * and give or sell his whole interest or property therein upon condition that the donee or vendee shall not alien the same, the same [condition] is void, because his whole interest and property is out of him * * * and it is against trade and traffic, and bargaining and contracting between man and man." Coke, *Commentary upon Littleton*, section 360; accord, *Boston Store v. American Graphophone Co.*, 246 U.S. 8, 21-25; *Straus v. Victor Talking Mach. Co.*, 243 U.S. 490, 500-501; cf. *Adams v. Burke*, 17 Wall. 453.

Other cases in which the courts have condemned, as *per se* unreasonable restraints of trade, attempts by manufacturers to control the further distribution of their products after they have parted with all interest in them, include *Baldwin-Lima-Hamilton Corp. v. Tatnall Measuring Systems Co.*, 169 F. Supp. 1, 29-30 (E.D. Pa.), affirmed, 268 F. 2d 395 (C.A. 3), certiorari denied, 361 U.S. 894 (attempt by patentee to limit purposes for which patented article could be

resold), and *United States v. American Linen Supply Co.*, 141 F. Supp. 105, 114-115 (N.D. Ill.) (provisions in patent licensing agreements prohibiting licensees from soliciting customers of other licensees); cf. *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5.

The numerous cases cited by appellant (J.S. 10-11, 16-17) for the proposition that the lower federal courts have "uniformly" upheld attempted restrictions by manufacturers upon the areas in which and the persons to whom their distributors may sell are, as the district court explained at length (J.S. 53-62), inapplicable to the present case. They fall primarily into two categories: (1) Suits by a seller for the contract price of goods sold, in which the courts have rejected the contention that recovery should be denied because one of the terms of the contract involved an allegedly unlawful limitation on the purchaser's subsequent use of the product.* (2) Actions based on termination or denial of a franchise, in which the courts have found no violation of the Sherman Act because the manufacturer had merely exercised its

* See *De R. Wilder Mfg. Co. v. Corn Products Refining Co.*, 236 U.S. 165, 174-175; *Sinclair Refining Co. v. Wilson Co.*, 52 F. 2d 974 (W.D.S.C.); *Phillips v. Iola Portland Cement Co.*, 125 Fed. 593 (C.A. 8), certiorari denied, 192 U.S. 606. As this Court recently pointed out (*Kelly v. Kosuga*, 358 U.S. 516, 518-519, footnote omitted), "As a defense to an action based on contract, the plea of illegality based on violation of the Sherman Act has not met with much favor in this Court. * * * [T]he federal courts should not be quick to create a policy of nonenforcement of contracts beyond that which is clearly the requirement of the Sherman Act."

right to limit the number of its own dealers located within a particular area.⁵ None of those cases supports the far-reaching restraints upon competition imposed by appellant's nation-wide system of allocating territories and customers.

B. The provisions in appellant's franchise agreements prohibiting dealers from selling to customers not having a place of business or purchasing headquarters within the franchised territory violate the Sherman Act for the further reason that they involve an unlawful geographical division of markets. Agreements dividing territories and customers among actual or potential competitors have long been recognized as *per se* unreasonable restraints of trade. *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6), affirmed, 175 U.S. 211; *Northern Pac.*

⁵ See *Packard Motor Car Co. v. Webster Motor Car Co.*, 243 F. 2d 418 (C.A.D.C.), certiorari denied, 355 U.S. 822; *Schwinn Motor Company v. Hudson Sales Corporation*, 138 F. Supp. 899 (D. Md.), affirmed, 239 F. 2d 176 (C.A. 4), certiorari denied, 355 U.S. 823; *United States v. Bausch & Lomb Optical Co.*, 45 F. Supp. 387 (S.D.N.Y.), affirmed on this issue by an equally divided Court, 321 U.S. 707; *United States v. Paramount Pictures*, 66 F. Supp. 323 (S.D.N.Y.), modified and affirmed, 334 U.S. 131; *Reliable Volkswagen S. & S. Co. v. World-Wide Auto Corp.*, 182 F. Supp. 412 (D.N.J.).

Boro Hall Corp. v. General Motors Corporation, 124 F. 2d 822, 130 F. 2d 196 (C.A. 2), the case which comes closest to supporting appellant's position, did not involve a restriction on the dealer's selling to customers outside his territory, as the court of appeals emphasized (124 F. 2d at 823). It involved a prohibition by General Motors against a single dealer's locating a used car lot at a site which would "unduly prejudice" rival dealers in new Chevrolet cars (*ibid.*). The character of the restraint was thus quite different from the broad restraint involved in the present case.

Railway Co. v. United States, 356 U.S. 1, 5; *Timken Roller Bearing Co. v. United States*, 341 U.S. 593; *United States v. National Lead Co.*, 63 F. Supp. 513 (S.D. N.Y.), affirmed, 332 U.S. 319; *United States v. Consolidated Laundries Corp.*, 291 F. 2d 563, 574-575 (C.A. 2); *Montana-Dakota Util. Co. v. Williams Elec. Coop.*, 263 F. 2d 431 (C.A. 8).

An agreement among appellant's dealers not to sell to customers in each other's areas would plainly be illegal. The adverse effect upon competition is the same, however, whether the dealers themselves enter into such agreements or whether, as in the present case, the restraints are imposed by a manufacturer under a nation-wide distribution system, which, through a series of interdependent, individual agreements with each distributor and dealer, limits territorially the customers to whom they may sell. Cf. *United States v. Masonite Corp.*, 316 U.S. 265, 276; *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44; *Snap-On Tools Corp.*, FTC Dkt. 7116, 3 UCH Trade Reg' Rep. ¶ 15,546 at p. 20,413. In either case, there has been "put together a combination in violation of the Sherman Act" (*Parke, Davis, supra*, p. 44), which completely deprives the public of the benefits of competition between dealers.

C. Appellant seeks to justify the territorial limitations which it imposes upon its distributors and dealers on the ground that, unless such persons are protected in their own territory against competition from other White dealers, they will not have an adequate incentive to promote vigorously the sale of appellant's products (J.S. 13-14). This claim of

business necessity is the same justification that has repeatedly been urged on behalf of price-fixing and other *per se* restraints, and that this Court consistently has rejected as a defense in such cases. *E.g.*, *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373, 407-408; *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457, 467-468.* As the Court recently explained (*Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5, emphasis added):

* * * there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. * * *

The "pernicious effect on competition" of the provisions in appellant's franchise agreements limiting the territories in which, and the persons to whom, its distributors and dealers may sell is obvious. For the purpose and effect of these provisions is to insure non-competitive marketing practices and to insulate the market from competitive selling by individual dealers. Cf. *Turner, The Definition of Agreement Under the Sherman Act*, 75 Harv. L. Rev. 655, 679. The provisions are therefore "conclusively presumed to be unreasonable and therefore illegal * * *."

* See, also, *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 159; *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 220-221.

Since there was thus no factual issue before the district court, and since the challenged contractual provisions on their face unreasonably restrained trade, the district court properly granted the government's motion for summary judgment. Cf. *Northern Pac. Railway Co. v. United States*, 356 U.S. 1; *International Salt Co. v. United States*, 332 U.S. 301; *Associated Press v. United States*, 326 U.S. 1.

II

Appellant's two challenges to the form of the judgment (J.S. 19) are without substance.

A. Appellant first contends that the judgment "does not sufficiently identify the provisions of said contracts which are adjudged to be illegal." The court's opinion, however, specifically sets forth the various contractual provisions challenged in this suit (J.S. 26-32), and in its Jurisdictional Statement appellant itself sets forth the various provisions attacked by the government (J.S. 6-7). In these circumstances, appellant can have no reasonable doubt as to the contractual provisions to which the judgment refers (J.S. 71-72) when it declares illegal appellant's contractual provisions:

(A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and

(B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant.

B. Appellant also contends (J.S. 19) that the injunctive provisions are "so broad as to enjoin * * * actions which are neither illegal nor actions which it is necessary or appropriate to enjoin in order to prevent resumption by the appellant of the actions found by the District Court to be illegal." The judgment of the district court, however, went no further than to enjoin the use of contractual provisions fixing resale prices and limiting the territories in which and the persons to whom resales might be made (J.S. 72). Appellant points to, and we know of, no actions, otherwise legal, which the judgment prohibits it from taking; in any event, "equity has power to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole" (*United States v. Bausch & Lomb Co.*, 321 U.S. 707, 724).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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No. 619

Supreme Court of the United States

October Term, 1961

THE WHITE MOTOR COMPANY, *Appellant*.

UNITED STATES, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM

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Supreme Court of the United States

October Term, 1901

No. 619

THE WHITE MOTOR COMPANY,

Appellant;

v.

UNITED STATES,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM

ARGUMENT

The Government, with complete disregard for generations of legal and business history, invites this Court to affirm summarily a decision of a single District Judge that was itself rendered without a trial of the facts upon a motion for summary judgment. This Court is thus asked to abolish, in such manner, a business practice of long and respectable standing and of particular importance to relatively small firms, such as appellant, in their competition with larger units.

The Motion to Affirm represents that the legal questions involved in this case are so clear that only citation of prior decisions by this Court and others is required to dispose of them. The questions that the Government treats so cavalierly have seemed far more substantial to responsible legal scholars. Of all the recent writings on this subject by distinguished commentators, not one has been found that shares the Government's doctrinaire certainty. See, e.g., Note, *Restricted Channels of Distribution Under the*

Sherman Act, 75 Harv. L. Rev. 795 (1962) (see especially the analysis of the District Court's opinion in this very case, *id.* at 797-801); Robinson, *Restraints on Trade and the Orderly Marketing of Goods*, 45 Cornell L.Q. 254 (1960); Hale & Hale, *Market Power* § 2.13 (1958); Hand-ker, *Annual Antitrust Review*, 11 Record B.V. City of N.Y. 367, 377-81 (1956); *Report of the Attorney General's Committee to Study the Antitrust Laws* 27-29 (1955); Ruskind, *Divisions of Territory Under the Antitrust Law*, in CCH, *Antitrust Law Symposium—1953*, at 173 (1954).

Moreover, as will be demonstrated, the authorities relied upon by the Government bear, at most, tangentially on the legality of agreements of the kind here involved. The pertinent case law, far from supporting the novel notion that such agreements are illegal *per se*, in fact upholds them as classic reasonable restraints of trade ancillary to a valid business purpose.

I. Additional Statement of Facts

Preliminarily, it should be noted that there is no issue before this Court concerning price-fixing. That issue received wholly separate treatment in the District Court's opinion (194 F. Supp. at 571-7) and final judgment (C IV (B)), and no appeal was taken from the judgment with respect to it, apart from questions as to the scope of relief. So far as the issues framed herein are concerned, each of the challenged provisions of appellant's dealer and distributor contracts is either illegal standing alone, or not at all. The fact that such contracts contained resale-price-

Indeed, there has never been any retail price-fixing of trucks. The only retail price fixing at issue in the Court below concerned sales of parts to limited classes of customers. See *United States v. White Motor Co.*, 194 F. Supp. 562, 569-70 (N.D. Ohio 1961). Accordingly, since price fixing was never coextensive with appellant's distribution system, it could not be argued (and the Government has not argued) that appellant's territorial and customer restraints are illegal *per se* because in aid of such a system.

maintenance provisions of limited scope at some time in the past is irrelevant.

Solely at issue are two types of separate provisions of appellant's contracts with its distributors and certain of its dealers. First, each distributor and dealer agrees with appellant not to sell trucks to customers who do not have places of business within a certain territory. Second, each distributor and dealer agrees not to sell trucks to certain classes of customers without appellant's consent. Each of these provisions, independently of the other, was held unlawful *per se* by the Court below (194 F. Supp. at 577-85), and is covered by a separate adjudication of illegality in the final judgment (IV, c.A.).

II. The Sweeping Effect of the Decision Below

The decision of the District Court is written in terms that could hardly be more inclusive. It invalidates at one stroke all territorial and customer limitations in all industries. Furthermore, it does so without regard to any considerations of reasonableness or business necessity. It drastically expands the limited classes of restraints on trade hitherto condemned as *per se* illegal. The decision is really more like a statute than anything else. It is not only these particular contracts that are struck down. It is not only the White Motor Company whose distribution system is destroyed. Henceforth, *no one* may employ the exclusive territorial distributorship device.² It is self-evident that such a decision, if it is to be made at all, should be made by this Court, and only after that full considera-

²Furthermore, the decree places restraints on White which are unnecessary to the eradication of the illegality found by the District Court (assuming for the moment that the finding was correct). White is forever enjoined from using territorial and customer limitations in its sales agreements, and also is prohibited ever to avail itself of the Miller Tydings Act. In these respects, as in others (U.S. p. 17), the decree exceeds the bounds of proper equitable relief. See *United States v. Bausch & Lomb Optical Co.* 321 U.S. 707, 729 (1944).

tion and mature deliberation possible after full briefing and argument.

III. Prior Cases Do Not Require or Support Summary Affirmance

A. The Bausch & Lomb Case

The principal reliance of the Motion to Affirm is on *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707 (1944). This case, it is said, makes any analysis unnecessary. The Court is told that the case holds territorial and customer restrictions illegal *per se*, and that is the end of the matter. But the truth is that no amount of ingenuity or selective quotation can turn *Bausch & Lomb* into anything more than a price-fixing case, as a perusal of the record and briefs therein, on file in this Court, will quickly show. (Nos. 62 and 64, October Term, 1943). There is not a word in the opinions, nor in the contracts that were attacked (see Transcript of Record, p. 699), about territorial limitations. The complaint alleged price-fixing and customer restrictions ancillary thereto. Paragraph 22 (Record, p. 9) states the gravamen of the complaint, as follows:

"... the defendants have refused to license retailers to sell Soft-Lite lenses whom said defendants considered to be price cutters or engaged in business practices of a nature disapproved by the defendants."³

Judge Rifkind's Findings of Fact in the District Court echo this same theme. Finding 17 (Record, p. 55), the key finding, reads as follows:

"17. By the establishment, operation, and enforcement of its licensing system, Soft-Lite, since that time, has exercised control over the prices to be charged by optical wholesalers and retailers for Soft-Lite lenses."

³The latter reference is to dealers who insisted on handling lenses manufactured by Soft-Lite's competitors.

The District Court's opinion emphasized that the entire distribution system at issue had as its central purpose the maintenance of high retail prices. The Court said, for example:

"Obviously, trade is restrained by the distribution system of Soft-Lite. Nor need we be concerned to inquire whether the restraint is unreasonable, . . . since price fixing is illegal per se." *United States v. Bausch & Lomb Optical Co.*, 45 F. Supp. 387, 395 (S.D.N.Y. 1942).

The parties' briefs in this Court, moreover, treated the case as involving price fixing aided by a restrictive distribution system. See, e.g., Statement as to Jurisdiction for United States, p. 9; Brief of United States, p. 28. And this Court's opinion, in summarizing the holding of the case, said:

"... a distribution system exists . . . which is illegal because of unlawful price fixing contracts. . . ."
321 U.S. at 724.

Even that portion of the opinion on which the Government most strongly relies refers not to territorial restraints, but to customer restrictions either in aid of price-fixing, or as part of a group boycott, as is clear from the Court's allusions to the Miller-Tydings Act, and to *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457 (1941). See 321 U.S. at 721, quoted on p. 6 of the Motion to Affirm. It is clear that *Bausch & Lomb* was presented to and decided by this Court as a case of price-fixing aided by a restrictive distribution system. Moreover, by no stretch of the imagination does the case have anything to do with territorial restraints.⁴

⁴In fact, the District Court actually sustained an exclusive distributorship contract. The Supreme Court affirmed the judgment as to this point by an equally divided vote.

What is thus clear from the records, briefs and opinions in *Bausch & Lomb* itself becomes doubly clear upon examination of the interpretations of that case made since the decision was handed down. So far as diligent research discloses, no court has yet construed the case as holding either territorial or customer restrictions, standing alone, illegal *per se*—except, of course, for the Court below in this case. In 1945, Mr. Justice Douglas, concurring in *Associated Press v. United States*, 326 U.S. 1, 23 (1945), gave what is surely the true exposition of *Bausch & Lomb*:

"Every exclusive arrangement in the business or commercial field may produce a restraint of trade. . . . But *Standard Oil Co. v. United States*, 221 U.S. 1, construed the Sherman Act to include not every restraint but only those which were unreasonable.

"But . . . an exclusive arrangement, though innocent standing alone, might be part of a scheme which would violate the Sherman Act in one of two respects.

"(1) It might be a part of the machinery utilized to effect a restraint of trade in violation of § 1 of the Act. Cf. *United States v. Bausch & Lomb Co.*, 321 U.S. 707."

After he left the bench, Judge Rifkind, who had decided *Bausch & Lomb* in the District Court, wrote an article on the subject of territorial restraints without even citing the case, on the point at issue here. Rifkind, *op. cit. supra* p. 2. Counsel for the United States in this case, writing five years after *Bausch & Lomb*, stated that the question of territorial restraints was not foreclosed by any decided cases. Lowminger, *The Fate of Free Enterprise* 114-15 (1949). It cannot be that he did not know of *Bausch & Lomb*. Rather, it is obvious that he (correctly) did not consider it dispo-

itive. And finally, even the District Court below did not cite *Ranch de Loub* in invalidating territorial restraints. To insist by disregard of these authorities that the case is controlling here is merely to demonstrate the weakness of the Government's position.

If *Ranch de Loub* "plainly governs the present case," if "the issues have all been resolved" by that decision, as the Government asserts (Motion re Affirm, pp. 6, 5), it is difficult to understand why the Government avoided tendering the identical issues to Judge Foran in *United States v. Volksteinspe of America, Inc.*, 182 F. Supp. 405, 409, 411-12 (D.N.J., 1960), where it argued that it was not necessary for him to pass upon the validity of the alleged territorial restrictions because they were part and parcel of a vertical price fixing conspiracy.

B. The Ancient Doctrine of Restraints on Alienation

The Government next summons to its aid no less an authority than Sir Edward Coke. Section 300 of his *Commentaries upon Littleton*, as cited by this Court in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 259 U.S. 373, 406 (5) (1941), is said to declare that England is upon the territory of reside, or the persons not born, reside may be made, the restraints upon alienation void, if common law. In fact, of course, the cited section of Coke refers only to *general* restraints on the sale, transfer, or property on condition that it not be resold at all. The very next section of the commentary states:

"If a feoffment in fee be made upon condition that the feoffee shall not interline U.S. or any of his

¹ Even this general restraint has been held to be unenforceable in the federal courts. *U. S. v. R. W. M. & Co., Inc.*, 100 F.2d 106 (2d Cir. 1937), 87-13713, 1115 (1937), cert. den., 308 U.S. 854, 62 S.Ct. 1023.

heirs or issues, etc., this is good, for he doth not restrain the feoffee of all his power. . . ." Coke, *Commentary upon Littleton* § 361 (19th ed. 1832).

To the same effect, compare Gray, *Restraints on Alienation* §§ 27-28 (2d ed. 1895) (cited in *Dr. Miles*, 220 U.S. at 405), with *id.* §§ 31-44.⁶ And of course, all of this ancient lore is directed solely towards conveyances in fee simple. It has nothing to do with the restraints—far more extensive—that could be attached to conveyances of lesser estates. It should be apparent by now that these *arcana*, even were they in point, have little to do with the antitrust laws. As Professor Chafee remarked,

"It does seem possible that the nineteenth and twentieth centuries have contributed legal conceptions growing out of new types of business which make it inappropriate . . . to base [a] . . . sweeping overthrow of contemporary commercial policies on judicial views of the reign of Queen Elizabeth." Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 983 (1928).

In fact, most Sherman Act cases, see pp. 11-13, *inf. a.*, have upheld restraints on alienation as reasonable.

The other authorities that the Motion to Affirm cites as in accord with Coke § 360 are also beside the point here. *Boston Store v. American Graphophone Co.*, 246 U.S. 8 (1918), and *Straus v. Victor Talking Mach. Co.*, 243 U.S. 490 (1917), are both price-fixing cases. And *Adams v. Burke*, 17 Wall. 453 (1873), is concerned solely with the scope of the patent monopoly. The case has nothing to do with legality under the general law, apart from the patent statute.

⁶See also Bracton, *De Legibus et Consuetudinibus Angliae*, lib. 1, fol. 13 (Woodbine ed. 1922).

C. The Horizontal-Market-Division Cases

Finally, the Government argues by analogy from the line of cases holding that horizontal territorial division among competitors is unlawful *per se*. Vertically imposed division has the same effect as horizontally agreed-upon division; therefore it should likewise be illegal *per se*—so the argument runs. But this argument from similarity of effect proves too much. Appellant could achieve the same effect by acquiring all its distributors and dealers by merger, an arrangement that would not be *per se* unlawful, but that would not have the advantage of fostering independent small businessmen. Beyond that, the purpose of vertical territorial limitations is completely different from that of horizontal division. The primary intent and effect of vertical territorial limitations are to enhance interbrand competition, whereas the principal intent and effect of horizontal division would be to suppress intrabrand competition. Moreover, a horizontal agreement among competitors is simply a naked restraint of trade. Its only reason for being is the restriction of competition. A vertical territorial restriction, on the other hand, is (or may be, in an appropriate case) merely ancillary to and in aid of the main lawful purpose of a contract between buyer and seller, i.e., the distribution of goods in commerce. Just as restraints in connection with sales of business, or contracts of employment, are valid if reasonable, so restraints in aid of lawful contracts of sale of personal property are valid if reasonable. See, e.g., *Cincinnati, P., B. S. & P. Packet Co. v. Bay*, 200 U.S. 179 (1906); *Oregon Steam Nav. Co. v. Winsor*, 20 Wall. 64 (1873).

This is by no means a novel analysis. The doctrine is clearly laid out in Judge Taft's seminal opinion in *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 282 (5th Cir. 1898), *modified and aff'd*, 175 U.S. 211

(1899), wherein restraints of trade are said to be lawful if

"... ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party."⁷

In the instant case, there are contracts of sale, all with a main lawful purpose, together with an admitted restraint of trade ancillary thereto. The inquiry must be (1) what is the extent of the seller's legitimate interest; (2) whether the restraint goes beyond the necessary protection thereof; (3) what is the effect of the restraint on the public's interest in free trade. None of these questions can be answered without a trial.⁸

⁷The panel of judges that sat in that case gives this language extraordinary authority. Not only did Judge Taft later become Chief Justice; his opinion was joined by Justice Harlan, sitting as Circuit Justice, and by Judge, later Justice, Lurton.

⁸Two authorities cited in the Motion to Affirm (pp. 8-9) may be dealt with here. It is true that the alternative holding in *Baldwin-Lima-Hamilton Corp. v. Tatham Measuring Sys. Co.*, 169 F. Supp. 1, 28-31 (E.D. Pa. 1958), *aff'd on other grounds per curiam*, 268 F.2d 395 (3d Cir.), *cert. denied*, 361 U.S. 894 (1959), was to the effect that it is *per se* illegal to limit the purposes for which a patented article may be resold. But, for one thing, this holding is, by no means clearly correct, see *General Talking Pictures Corp. v. Western Elec. Co.*, 305 U.S. 124, *affirming on rehearing* 304 U.S. 175 (1938); Note, *Patent Use Restrictions*, 75 Harv. L. Rev. 602 (1962). And, for another, the Third Circuit's affirmance was based on an entirely different ground; a ground which, indeed, was regarded as "more basic," 169 F. Supp. at 30, by the District Court. And finally, the case involved only the use of a patented article, not the area within which it could be sold. The other case relied on by the Government, *United States v. American Linen Supply Co.*, 141 F. Supp. 105, 112-15 (N.D. Ill. 1956), is actually authority for the appellant. For there the court, in denying a motion to dismiss under Fed. R. Civ. P. 12(b)(6), stated that "this controversy can be resolved only through a trial," *id.* at 114. That is exactly appellant's position here. Appellant has never contended that it is entitled to judgment without trial - only that the Government is not.

D. The Cases in Point Reject a *Per Se* Rule

A substantial body of authority supports the application of the foregoing analysis to territorial and customer restraints and refuses to invalidate them *per se*.

The first case, in point of time, was *Phillips v. Lola Portland Cement Co.*, 125 Fed. 593 (8th Cir. 1903), *cert. denied*, 192 U.S. 606 (1904). The defendant there, a cement jobber, agreed to buy cement from the plaintiff and promised not to resell it outside the state of Texas. The defendant then refused to accept the cement on the ground that the contract violated the Sherman Act, and the plaintiff sued him for damages.¹² The Circuit Court of Appeals for the Eighth Circuit held squarely that the contract was legal and enforceable. This was the sole basis of the decision. The fact (if it is a fact) that under *Kelly v. Kosuga*, 358 U.S. 516 (1959), the decision could have gone on another ground, is immaterial.¹³ The Court, applying the *Addyston Pipe* formula, held that

... this restriction was not the chief purpose or the main effect of the contract of sale; but was a mere indirect and immaterial incident of it. 125 Fed. at 595.

This rationale was applied to the distribution of automobiles in *Reliable Truck Sales & Serv. Co. v. World Wide Automobile Corp.*, 182 F. Supp. 412, 424-27 (D.N.J. 1960), in which Judge Forman granted a motion to dis-

¹²Contrary to the statement in the Motion to Affirm, p. 9 and n. 4, the action was *not* for the purchase price of goods "ready sold and delivered."

¹³It is noteworthy, moreover, that the *Kosuga* case itself, in the trial court, upholds a general restraint on alienation. *Kosuga v. Kelly*, 1957 Trade Cas. 98714 (N.D. Ill. 1957), *aff'd on other grounds*, 257 F. 2d 48 (7th Cir. 1958), *aff'd*, 358 U.S. 516 (1959). The Supreme Court did not disapprove this holding.

miss a complaint attacking the imposition of territorial restrictions on distributors, where there was no allegation of public injury, on the ground that such a restraint was not *per se* illegal. Whatever the present status of the public-injury doctrine, the case squarely holds that an automobile distribution system similar in all respects to the one used by White Motor Co. is not illegal *per se*. The case does *not* concern, as the Motion to Affirm, pp. 9-10 and n. 5, erroneously states, the mere limitation of the number of dealers in a particular area. Cf., e.g., *Packard Motor Car Co. v. Webster Motor Car Co.*, 243 F.2d 418 (D. C. Cir.), *cert. denied*, 355 U.S. 822 (1957). Volkswagen distributors were allegedly permitted to sell only to dealers located within their respective exclusive territories, and this restriction was upheld.

Another very recent case sustains customer restrictions: In *Reclon, Inc. v. Regal Pharmacy*, 132 U.S.P.Q. 187 (E.D. Mich. 1961) (alternative holding), a distribution system forbidding jobbers from reselling except to beauty shops and schools, and forbidding the latter to resell to the public, was upheld. See also *Beloit Culligan Soft Water Serv., Inc. v. Culligan, Inc.*, 274 F.2d 29 (7th Cir. 1960). Other cases substantially in accord with appellant's position, cited in the Jurisdictional Statement and not distinguished by the Motion to Affirm, include *United States v. Newbury Mfg. Co.*, 36 F. Supp. 602 (D. Mass.), *motion to vacate denied*, 123 F.2d 453 (1st Cir. 1941); and *P. Lorillard Co. v. Wincarden*, 280 Fed. 238 (W.D.N.Y. 1922). Furthermore, *Boro Hall Corp. v. General Motors Corp.*, 124 F.2d 822, *rehearing denied*, 130 F.2d 196 (2d Cir. 1942), *cert. denied*, 317 U.S. 695 (1943), did not involve only a contract not to set up a place of business outside a certain area. It also upheld a requirement that Chevrolet dealers not solicit customers outside their territories, as the opinion of the District

Court makes clear. See *Boro Hall Corp. v. General Motors Corp.*, 37 F. Supp. 999, 1000 (S.D.N.Y. 1941).¹¹

The Federal Trade Commission has consistently refused to hold exclusive territorial arrangements unlawful *per se*. One of the earliest rulings of that body expressly upheld such an arrangement. *Conf. Rul. No. 13*, 1 F.T.C. 543 (1915). This rule was adhered to in *General Cigar Co.*, 16 F.T.C. 537 (1932), and, more recently, in *Roux Distrib. Co.*, 55 F.T.C. 1386 (1959) (alternative holding), in which *Bausch & Lomb* was characterized simply as a price-fixing case, *id.* at 1388, customer limitations were held not invalid *per se*. The most recent pronouncement of the Commission on the subject is cited by the Government in this case, but in fact scrupulously refrains from holding territorial restrictions unlawful *per se*. *Snap-On Tools Corp.*, FTC Dkt. 7416, 3 *ACH Trade Reg. Rep.* ¶ 15,546 (Nov. 1, 1961).

This preliminary and cursory view of the authorities amply demonstrates that the decision below is not so clearly right as to deserve summary affirmance.

IV. Important Business Factors Which a Per Se Rule Ignores

The rigid *per se* rule sweeps aside as irrelevant a vast body of business experience. Exclusive territorial distributorships are devices of long standing, found useful and appropriate by the White Motor Company for approximately half a century. The practice became increasingly common in the first three decades of this century, simply because it greatly facilitates the distribution of certain types of goods. *E.g.*, Hotchkiss, *Milestones of Marketing* 245-47 (1938).

¹¹Further confirmation that this anti-solicitation provision was also part of the contract assailed may be found in the later litigation instituted by the dealer, this time based on state-law grounds. See *Boro Hall Corp. v. General Motors Corp.*, 68 F. Supp. 589 (1946), *motion to vacate denied* 6 F.R.D. 539 (E.D.N.Y. 1947).

Thorough analysis of business and economic factors has demonstrated that the device is peculiarly beneficial in the marketing of very expensive, heavy merchandise, requiring constant service, through distributors and dealers who must make an immense capital investment out of their own funds. N.Y.U. Bureau of Business Research, *The Exclusive Agency* 2, 58-62 (1923) (sample contract in motor-truck industry set forth); *The Use of Exclusive Retail Agencies*, 3 Harv. Bus. Rev. 485, 492 (1925). Automobile and truck dealers have become a new class of independent small businessmen, see Moore, *The Automobile Industry*, in *The Structure of American Industry*, at 274, 316 (Adams rev. ed. 1954); and the territorial-distributorship practice has encouraged this development. The practice has been particularly common in automotive distribution, e.g., Kennedy, *The Automobile Industry* 63 (1941); Sinsabaugh, *Who, Mr. Ford? Forty Years of Automobile History* 233 (1940). It has been viewed as perfectly legal by business authorities, Converse, Huegry & Mitchell, *Elements of Marketing* 705-07 (5th ed. 1952); N.Y.U. Bureau of Business Research, *op. cit. supra*, at 16.

Beyond these general considerations, special circumstances peculiar to the trucking industry, and to the White Motor Company in particular (circumstances which were brought to the District Court's attention, J.S. pp. 48-49), combine to make the practice as used by White reasonable under the Sherman Act. White wants and needs this kind of contract. On the strength of it, it has built up tremendous good will in its dealers and distributors. They have invested great sums in land, buildings, inventory, advertising, and servicing know-how. Since the volume of White's business is not nearly so great as that of its giant competitors, Ford, General Motors, and International Harvester, White needs assurance that its dealers will get the cream

of the market in their respective territories, in order for them to be able also to go after hard-to-get sales. Not only would many independent small businessmen be irreparably injured by a *per se* rule; it would no longer be possible to obtain dealers of the ability and financial responsibility required in order to market trucks properly, and the business of White itself, the oldest surviving independent truck manufacturer, would also be irreparably injured.

The restraints involved in this case, moreover, go no further than necessary to assure the adequate performance by White's dealers of their servicing and selling obligations. For example, competition is not eliminated as to customers that have places of business in more than one territory—any distributor or dealer located in the same territory with any of such places of business may freely sell to such a customer. See, e.g., Distributor Selling Agreement, art. 2 (Exhibit 1 to Deposition of Alfred W. Edgerton, on file with this Court).

The crux of the matter is that, without its system of territorial and customer limitations, White would be far less able to rival its giant competitors. Service is White's main selling point. It may be that some small amount of inter-dealer competition is eliminated—though nothing of the kind has been proved. But what is that to the great stimulation of interbrand competition? Clearly, the public interest in maintaining White as a vigorous competitor against the giants is far greater than that in forcing White to allow its dealers to fight among themselves. Yet the District Court ignored all these factors. The salutary purpose of the Sherman Act is to foster competition. The opinion below, though written in the name of competition, perverts that purpose.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

THE WHITE MOTOR COMPANY, *Appellant*,

v.

UNITED STATES, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR APPELLANT

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V. There Should Be a Full Hearing in This Court

The decision below went on summary judgment. There was no trial to evaluate and sift all the business factors relevant to a proper analysis of this complicated question of antitrust law. Experience, no less than reason, teaches that such difficult matters should not be precipitately decided. Even if the practices involved, or some of them, should eventually be held *per se* illegal, such a departure from prior law should not be made in a factual vacuum, without a trial. Summary-judgment procedure is to be used with particular care in complex antitrust litigation, *cf. Poller v. Columbia Broadcasting Sys., Inc.*, 368 U. S. 464, 473 (1962). This Court should correct the situation when that procedure has been misused below. Compare *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-57 (1948).

More basically, such an important and far-reaching question should be decided only by this Court after full hearing. This is the White Motor Company's only opportunity for review. It would be "unthinkable," as this Court recently observed, *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 325 (1961), quoting with approval *Hartford-Empire Co. v. United States*, 324 U.S. 570, 571, *clarifying* 323 U.S. 386 (1945), for such an important and far-reaching question to be decided, with nationwide effect, by a single district judge.

CONCLUSION

For the foregoing reasons, appellant respectfully prays that the Government's motion for summary affirmance be denied, that this Court enter an order noting probable jurisdiction of this appeal, and that the case be briefed and argued orally on the merits.

Respectfully submitted,

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Cruger, <i>How Industrial Distributors Help Small Manufacturers</i> , in <i>Management Aids for Small Manufacturers: Annual No. 4</i> at 77 (1958)	15
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Lewis, <i>How To Set Up Sales Territories</i> , in "Management Aids for Small Business," Annual No. 3 at 16 th (1957)	16
N.Y.U. Bureau of Business Research, <i>The Exclusive Agency</i> 2, 6, 27-33, 58-62 (1923)	12, 18
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 54

THE WHITE MOTOR COMPANY, *Appellant*,
v.
UNITED STATES, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR APPELLANT

OPINION BELOW

The opinion of the District Court (R. 49) is reported in 194 F. Supp. 562. The final judgment entered by that Court is set out at R. 107.

JURISDICTION

Appellee brought this civil suit for an injunction under Section 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U.S.C. § 4, to restrain alleged violations by appellant of Sections 1 and 3 of that Act, on June 30, 1958.* The District Court, on motion for summary judgment and without taking testimony, entered final judgment on September 5, 1961, and appellant filed a Notice of Appeal in that Court on October 26, 1961. This Court noted probable jurisdiction of the appeal on April 23, 1962. 369 U.S. 858. Jurisdiction by direct appeal is conferred on this Court by Section 2 of the Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. § 29.

QUESTIONS PRESENTED

Whether the following provisions of written agreements between White and its dealers and distributors are illegal *per se* under Section 1 of the Sherman Act and hence to be automatically set aside without regard to their business purpose or competitive effect:

1. A provision that White's distributors and dealers will not resell trucks bought from White to persons who do not have a place of business or purchasing headquarters within specified areas;

2. A provision that White's distributors and dealers will not sell for resale trucks bought from White except to authorized White outlets, and will not sell them at all to certain named customers White reserves for itself.

These questions are of first impression in this Court.

* Sections 1, 3, and 4 of the Act are set out in the Appendix.

STATEMENT

The Court below has radically departed from prior law and sought to expand the limited categories of agreements that are *per se* in violation of the Sherman Act. Although only The White Motor Company, whose circumstances will be described below in detail, is a party to this case, the nature of the District Court's action—for example, its brushing aside of large areas of economic and business experience as irrelevant—makes it clear that much of traditional American business practice, in many industries, is jeopardized. This particular case arose as follows:

The White Motor Company is the oldest surviving independent manufacturer of trucks and truck parts. It uses¹ several different methods of distribution to get its trucks and parts to the ultimate consumer. The company's own branches sell trucks directly to consumers at retail. These branches do about half of White's² business. In selling areas where competing manufacturers do not sell through company branches, White sells through distributors, who resell both at retail and to dealers appointed by them, and through "direct dealers," who resell at retail. Each of these distributors and dealers must make a substantial capital investment in plant, inventory, and skilled per-

¹ Facts are stated throughout as they existed at the time of the entry of the judgment in the Court below. Actually, White's distribution system has been simplified since that time: it no longer uses distributors as a separate tier in its system, but sells directly to dealers instead.

² The word "White" throughout this brief refers to sales of both White and Autocar trucks and truck parts.

sonnel. Each of them must also be trained intensively for many months, for literally every White truck sold is made to order to suit a particular customer's unique needs, and technical skill is required to tailor-make that truck to each buyer's special requirements.

White's relations with these distributors and dealers are governed by contracts between White and each of its distributors and direct dealers, and by contracts, executed on forms furnished by White, between each of the distributors and each of their respective dealers. These contracts typically require that the distributors and dealers give White effective representation, and that they maintain certain standards of inventory, service, and physical plant. In all, there are about 200 distributors and 100 dealers. (R. 503).

Insofar as now relevant, the Government's amended complaint in this case, filed March 28, 1960, challenged two provisions of White's contracts with its distributors and dealers, and of the distributors' contracts with their dealers.³ The first of these provisions requires

³ The complaint also alleged, and the District Court found, that White and its distributors had agreed on prices at which trucks should be resold to dealers; and that White and its distributors and dealers had agreed on the discounts to be made on sales of parts (not trucks, R. 60) to certain large customers. Appellant is not questioning the finding of the Court below, made in a separate provision of its decree (¶ IV (B), R. 109), that such an agreement is illegal, and no issue as to price-fixing is before this Court. There was no finding below that the customer and territorial limitations were illegal because ancillary to a price-fixing scheme. Indeed, there could hardly have been such a finding, since the price-fixing that did take place was severely limited in scope, while the territorial and customer limitations covered White's entire distribution

that distributors and dealers not sell White trucks to persons who do not have a place of business or purchasing headquarters within certain specified areas. A typical distributor contract provides (R. 425):

"1. SELLING PRIVILEGE AND TERRITORY

Distributor is hereby granted the exclusive right, except as hereinafter provided, to sell during the life of this agreement, in the territory described below, White and Autocar trucks purchased from Company hereunder.

"STATE OF CALIFORNIA:

(description of territory)

Territory to consist of all of Sonoma County, south of a line starting at the western boundary, or Pacific Coast, passing through the City of Bodega, and extending due east to the east boundary line of Sonoma County

"2. MERCHANDISING AGREEMENT

Distributor agrees to develop the aforementioned territory to the satisfaction of Company, and not to sell any trucks purchased hereunder . . . except to individuals, firms, or corporations having a place of business and or purchasing headquarters in said territory."

The second challenged provision is a promise by the distributor or dealer not to sell White trucks, without White's consent, to any persons, except authorized White outlets, for resale, nor to any federal or state

system. For example, the provisions of appellant's distributor contracts affecting the resale price to dealers applied to less than five per cent. of the trucks bought by distributors from White. (R. 47-48). The proportion of such sales to the total sales made by White through distributors and dealers would, of course, be even less.

governmental body, nor, in some instances, to certain named customers. A typical distributor contract provides (R. 425):

"Distributor agrees not to sell nor to authorize his dealers to sell such trucks to any person, firm or corporation for resale by such person, firm or corporation, unless the right to do so is specifically granted by Company in writing. (Company Branches, Company approved distributors, direct key dealers, and direct dealers, and Distributor's key dealers and dealers are excepted through this paragraph.) Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing."

All of the contractual provisions at issue are bilateral vertical agreements between White or a distributor on the one hand, and a distributor or dealer on the other. There are no horizontal agreements between or among distributors or dealers. Each of the two types of provisions has been in use by White for approximately half a century.

Appellant admitted the existence of these two types of contractual provisions, but denied that they were illegal. The Government moved for summary judgment. Appellant filed a brief opposing this motion. It argued that it should be allowed to present, at trial, evidence of the reasonableness of its contracts, when considered in their own unique business and economic context. But the District Court disregarded these contentions and refused to give appellant the factual

hearing it requested. The Court granted the Government's motion for summary judgment.⁴ It held the challenged contractual provisions illegal *per se*, without regard to any proof of reasonableness that appellant might produce. The type of facts that appellant had offered to prove, it held, would be immaterial and irrelevant to the legality *vel non* of appellant's contractual provisions. 194 F. Supp. at 571.

After considering further briefs of the parties as to the form of the decree, the Court below entered a final judgment (R. 109) that perpetually enjoined appellant, *inter alia*,

"from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer, or any other person:

"(A) to limit, allocate or restrict the territories in which, or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks" (Para. VI).

The effectiveness of this judgment was stayed by the District Court pending the final disposition of this appeal. (R. 111).

⁴ Since there was no trial, the material parts of the record in this case are very short indeed. The excessive bulk of the printed record, which runs to 503 pages, is due to insistence by the Government that this Court be burdened with repetitious and irrelevant matter, such as long lists of distributors and dealers by name. See R. 116-422.

SUMMARY OF ARGUMENT

For approximately 50 years White has developed its distribution organization around territorial franchises, while reserving certain types of business to itself. The company is now engaged in a strenuous competitive war with General Motors, Ford, and other large concerns that have been and are increasingly active in the truck field. A White dealer is assured that he may develop all White business in his area. Thus the substantial investment and long-term effort needed to build up a dealership are made worthwhile.

The peculiar nature of the truck business is such that service to local and out-of-state users of White trucks plays an important part in the development of the business. Dealers must invest large sums in spare parts, plant, and inventory, and maintain organizations that can be built up only by long periods of training.

The vigor of White's competitive effort depends upon the strength of its distribution organization, which in turn rests upon these territorial and customer arrangements. These provisions in White's dealer contracts serve to direct the competitive energies of White's dealers against other truck brands, and to ensure that only competent, technically skilled persons sell White trucks to the public. The very factors that have promoted these arrangements within the White organization are recognized by the Department of Commerce and the Small Business Administration, which have advised businessmen on the advantages of such contracts.

The *per se* rule, first announced by the Court below, assumes without proof or opportunity to present proof that all territorial limitations and customer restrictions are "without redeeming virtue." This is a matter, however, that should be determined at trial and not by judicial fiat. There is no body of judicial or economic experience that justifies such a sweeping attack on long-established patterns of trade and distribution.

Certainly, no other decisions interpreting the Sherman Act embrace the *per se* rule. To be sure, horizontal division of territories or customers reached by agreement among competing manufacturers would be unlawful as a naked restraint of trade with the sole purpose of eliminating competition. Quite different is the situation here of a vertically imposed limitation instituted by the seller to enhance his competitive efforts against other sellers, thereby maintaining and increasing the volume of his goods that reach the public. Surely such arrangements come within a rule of reason. Learned commentators, law reviews, and the Federal Trade Commission agree that limitations of this kind are not *per se* illegal, and the very types of limitations involved in this case have been upheld by the courts in Sherman Act cases. These limitations are but examples of the ancillary restraints that flourished at common law and that have been governed by the rule of reason under Section 1 of the Sherman Act.

ARGUMENT

White has been denied its day in court. It finds its competitive vigor jeopardized and its established method of distribution eliminated by a generalized rule of the District Court that ignored the particular prob-

lems of the truck business and the economic and business reasons responsible for the patterns of trade that have evolved. White is being victimized by the effort of the Antitrust Division to create simple rules of thumb that will enable wholesale prosecution without regard for the resulting competitive consequences.

The case concerns the validity of two types of contractual provisions that have been widely used for a great many years, not only by appellant but also by many other businesses in many different fields. Each of these types of provisions—they will be referred to, for convenience, as “territorial limitations” and “customer limitations”—was held illegal *per se* by the District Court. In the view of that Court, and of the Government, *no* considerations of reasonableness or business necessity, however compelling they may be, may be heeded. Whatever the purposes of the parties, whatever the effect on the interests of the consuming public, whatever the policies underlying the antitrust laws, these agreements are *never* lawful. The District Court’s decision is like a statute. It might just as well have filed a slip of paper reading, “*Be it enacted*, that Section 1 of the Sherman Act is amended, to make every vertical territorial and customer limitation illegal.”

I. THE DISTRICT COURT’S DECISION DISREGARDS A VAST BODY OF ECONOMIC AND BUSINESS EXPERIENCE

A rigid *per se* rule totally ignores a vast body of business experience. Territorial limitations are devices of long and honorable standing, found useful and appropriate by White for approximately half a cen-

tury. They are and have been in common use among many other types of business, each with individual needs and characteristics. White maintains that the basic purpose of the device is to maintain and to increase volume, making possible the lowering of prices through increased competition with other truck manufacturers. See Hewitt, *Automobile Franchise Agreements* 233-35 (1956). Whether this in fact is the purpose of the contracts at issue, and whether their effect on competition is in fact beneficent, are both questions of fact to be decided in each individual case. It happens that the distribution of trucks—as will be more fully shown below—is better suited to this form of marketing than are most other sales activities. It is certain that in some instances, where all of the factors favoring the system coincide, territorial limitations are the most effective means of getting the greatest volume of goods on the market at the lowest cost to the consumer, and that their practical effect is actually to enhance inter-brand competition. That being so, a heavy-handed, doctrinaire *per se* rule must be rejected.

Business authorities in the field of distribution and marketing agree that in some instances it is competitively effective for a manufacturer to make certain that only one dealer is selling its goods to the residents of a particular area. In this way, dealers' competitive energies will not be directed against each other—a conflict from which the manufacturer derives no ultimate benefit—but rather against the dealers of competing manufacturers. Of course, this rationale does not apply if the manufacturer has a monopoly of the market for, say, motor trucks. But that is not the case here.

Where, as here, there is vigorous interbrand competition, the goods being sold are very expensive, requiring constant service, and distributors and dealers must make an immense capital investment in inventory and plant out of their own pockets (the average value of business assets owned by White distributors and dealers is over \$250,000), territorial limitations are particularly beneficial. See Note, *Restricted Channels of Distribution Under the Sherman Act*, 75 Harv. L. Rev. 795, 809-13 (1962); Jordan, *Exclusive and Restrictive Sales Areas Under the Antitrust Laws*, 9 U.C.L.A.L. Rev. 111, 152-55 (1962); N.Y.U. Bureau of Business Research, *The Exclusive Agency* 2, 27-33 (1923) (setting forth sample contract in motor-truck industry at 58-62); *The Use of Exclusive Retail Agencies*, 3 Harv. Bus. Rev. 485, 492 (1925). See generally Hotchkiss, *Milestones of Marketing* 245-47 (1938).

These factors fit the truck industry, as appellant explained in the court below (R. 41-45). White, on the strength of this kind of contract, and in reliance on the cases sustaining its legality,⁵ has built up substantial good will in its organization of independent dealers and distributors. The contracts assure that White dealers will have the resources to scour their respective areas for hard-to-get sales, since they will

⁵ Business authorities have also counseled that territorial limitations are legal. Hewitt, *Automobile Franchise Agreements* 233-35 (1956); Converse, Huegy & Mitchell, *Elements of Marketing* 706 (5th ed. 1952); N.Y.U. Bureau of Business Research, *op. cit. supra* at 15-16. The second authority has been recommended to businessmen by the Small Business Administration. Sevin, *Analyzing Your Cost of Marketing* 4 (1957). (Management Aids for Small Business, No. 85).

have the security of getting the easier, larger-volume White customers in their areas. And dealers who have spent valuable time "pre-selling" a customer—i.e., softening him up for a White sale instead of a G.M. or Ford sale—will not lose the legitimate reward of their labor to another White dealer who jumps territorial boundaries at a strategic moment and snatches away the pre-sold customer.

Such "an attempt to pick off the best accounts—to 'skim the cream.'" Note, *Restricted Channels of Distribution Under the Sherman Act, supra*, at 811, is particularly undesirable because it weakens White's over-all dealer organization. Individual dealers need the "cream" not only in order to be able to sell "less lucrative accounts," *ibid.*, but also in order to have the financial strength to maintain adequate service facilities. White trucks travel constantly across the nation. Their drivers have to count on strong service departments at convenient intervals along the way. If such service is not forthcoming, the drivers' employers will, quite naturally, stop buying White trucks. White's primary purpose is not to insulate dealers from competition for their own benefit, but to keep the dealers strong, in order to protect and maintain White's own business and reputation and increase competition with other manufacturers.

The territorial limitations imposed by White, finally, are no greater than necessary to secure these legitimate interests. Consumers with places of business in more than one territory, for example, may buy from any distributor or dealer located in any one of the territories covered.

Considering all these advantages—which could be proved at a trial of this case—it is easy to see why White favors territorial limitations on distributors and dealers.⁶ But it is not easy to see why one branch of the Government now insists that these limitations are illegal *per se*, when other branches of the Government have been actively advising that businessmen seriously consider using them. The United States Department of Commerce, for example, in an official Government publication put out by its Bureau of Foreign and Domestic Commerce in 1945, *Check List for the Introduction of New Consumer Products*, listed a number of areas that businessmen must consider in determining how to sell a new product. One of these areas was distribution, of which it was said:

“no phase of the introduction of a new consumer product is more important than the establishment of proper and efficient channels through which the goods can flow to the ultimate user.” *Check List, supra*, at 9.

The following questions were put forward as among those that must be answered by a businessman trying to decide how to distribute his new products:

“6. . . . d. On what basis do your competitors usually sell products of this kind to retailers?

“ i. Exclusive franchise?

“ ii. Selected distribution?

“ iii. General distribution?

⁶ Many English automotive manufacturers have come to the same conclusion. See Davies & Palmer, *Market Research and Scientific Distribution* 254-55 (1957).

"e. If on an exclusive basis, do dealers expect to be protected against competition from other retail outlets in their town or neighborhood?" *Id.* at 12.

This *Check List*, it may be noted parenthetically, has recently been cited with approval and recommended for reading by businessmen in another official government publication, Larson, *Developing and Selling New Products: A Guidebook for Manufacturers* 59 (2d ed. 1955) (joint publication of the Department of Commerce and the Small Business Administration).

Plainly, the Government is here advising businessmen that if their competitors' dealers are protected from competition in their town or neighborhood, they had better consider giving their own dealers similar protection. White's practice is consistent with this advice.

The same advice has been given in a more recent publication of the Small Business Administration. In Cruger, *How Industrial Distributors Help Small Manufacturers*, in *Management Aids for Small Manufacturers: Annual No. 4* at 77 (1958), it is stated:

"(4) You should establish a clear and well-defined sales policy. The terms of the franchise—exclusive, selective or intensive—should be put forth in a written agreement or statement.

"On that last point, it may be helpful to explain briefly the terms 'exclusive,' 'selective,' and 'intensive' distribution. *Exclusive* distribution describes the situation where a distributor is given the sole right to sell a manufacturer's product in a specified territory. *Selective* distribution in-

dicates a marketing policy under which a certain few distributors are appointed to sell in a given area; this policy hinges upon the size of the potential market and the number of distributors in any one territory. *Intensive* distribution means a very wide appointment of distributors, creating an almost unrestricted outlet for the product, but also tending to create a limited interest on the part of the distributor. Frequently, distributors will not push lines which they know are being intensively distributed."

That passage is even more direct and explicit than the *Check List* already quoted. It virtually tells the businessman to shun "unrestricted" distribution and to choose between the exclusive and selective methods. White has simply chosen the first method: its dealers have the "sole right to sell" White trucks "in a specified territory." Compare Lewis, *How To Set Up Sales Territories*, in *Management Aids for Small Business: Annual No. 3* at 46 (1957), which strongly urges that salesmen be limited to assigned areas in terms equally applicable, as a matter of business logic, to distributors and dealers.

It cannot be that those agencies of the Federal Government to which businessmen are encouraged to look for sound advice—agencies that were set up to aid and foster American business—have been advising all these years that businessmen enter into contracts illegal *per se*. The Government cannot be actively advising and inducing the commission of a crime. "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its ex-

ample." *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

Equally potent business and economic reasons justify White's use of customer limitations. Basically, White wishes to be represented only by distributors and dealers of the highest integrity and mechanical skill. White's business is unique in that every truck sold is made to order for its buyers' own special business needs. There is no standard, assembly-line White truck, as there are Fords or Chevrolets. When a customer buys from a White dealer, he doesn't simply pick a truck off a lot or out of a showroom and drive it away; nor does he order an assembly-line truck from a catalogue. An intensive examination is made by the dealer's technical personnel of his personal needs. In order to give expert advice on how to haul the maximum payload of the customer's contemplated cargo at the lowest operating cost per mile, they must determine, for example, exactly how big the engine ought to be; exactly what combination of transmission, clutch, and drive-shaft is called for. They must plan specifically for the particular loading and unloading problems presented. They must know and give design effect to the weight and length laws that will govern the customer's operations. Ultimately their plan for the customer is, in each case, reviewed by White's own engineering department. Only after this exhaustive preparation is a truck actually put together and sold to the customer. A distributor or dealer is not competent to handle this intricate process until he has had many months of specialized White training. This tailor-made method of operation, this painstaking indi-

vidualized service, is White's main selling point. It is precisely this feature that enables White to compete against the giant mass producers.

Obviously this carefully planned system will not work, as a business matter, if White cannot choose the persons who will sell its trucks. Unauthorized dealers will be unqualified to work out specifications for trucks to meet customers' peculiar requirements. Errors in putting together these specifications will cause irreparable, perhaps fatal, damage to White's good name and reputation. There will be an inevitable exodus of buyers to the giant manufacturers. It is little short of shocking that the United States, in the name of laws designed to protect competition, should seek such a result.

The reason for reserving the right to sell particular accounts, such as government agencies, is even simpler. It is the natural feeling that the only sure way to make certain that something really important is done right, is to do it for oneself. The size of the orders, the technicalities of bidding and delivery, and other factors all play a part in this decision. Customer reservations have long been standard policy with many firms. See Tisdal, *Problems in Sales Management* 345 (1925) (setting out sample contract); N.Y.U. Bureau of Business Research, *The Exclusive Agency* 6 (1923); Note, *Restricted Channels of Distribution Under the Sherman Act*, 75 Harv. L. Rev. 795, 817 (1962).

Furthermore, an expert agency of the United States Government has warned manufacturers of the need to

adopt a distribution system of the type White uses. In Clewett, *Checking Your Marketing Channels* 4 (1961) (Management Aids for Small Manufacturers, No. 120), the Small Business Administration has given the following advice:

"Elements to Include. A satisfactory distribution plan will include the following:

- "(1) A clear statement of geographic markets and customer-types to be sold, arranged in order of importance,
- "(2) The types of resellers to be used on all levels of distribution,
- "(3) The coverage plan: that is, whether distribution will be through as many outlets as possible, through a selected number in each area, or through exclusive distributors and dealers
- "(6) Policy statements regarding any areas of conflict, such as special or 'house' accounts"

White's distribution system is consistent with this governmental advice. In addition to element (3), the appointment of "exclusive distributors and dealers" "in each area," already discussed, its plan includes elements (2)—a specification of the "types of resellers" (authorized White outlets) "to be used on all levels of distribution"—and (6)—a "[p]olicy statement" eliminating "areas of conflict," by reserving certain "special or 'house' accounts" to the manufacturer. Surely it is not illegal *per se* to set up a distribution system approved by the United States Government.

It may, possibly, be illegal under some circumstances. But no opportunity has yet been afforded to determine whether those circumstances exist in this case.

II. THE COURTS HAVE CONSISTENTLY UPHELD VERTICAL TERRITORIAL AND CUSTOMER LIMITATIONS THAT ARE REASONABLE

The holding of the Court below ignores these and comparable business and economic facts. It loses sight of the fundamental rule of law that restraint of trade is a practical, business concept, not a lifeless and inflexible rule. As Chief Justice Hughes put it, the Sherman Act,

“as a charter of freedom, . . . has a generality and adaptability comparable to that found to be desirable in constitutional provisions. . . . The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness.” *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 359-60 (1933).

That has been the law ever since *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), and it is the law today. Just last term, this Court, in a different but closely analogous field, made clear that *per se* rules must not be allowed to expand to their absurd logical limit. *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962). Only a few types of agreements are so pernicious as to be condemned without a hearing. Among these limited exceptions to the general rule are contracts fixing prices, divisions of territories or customers among competitors, and boycotts. This case involves none of these traditional categories. It is

rather an attempt by the Government to extend them into an area heretofore reserved for the rule of reason.

Appellant does not claim, of course, that vertical territorial and customer limitations are always and without exception legal. Unlike the Government, it does not espouse a proposition so offensive to the discriminating intelligence. Appellant's position is simply that such agreements are not always and without exception illegal. The matter depends upon the "reasonableness" of the agreements, and that, in turn, depends upon a variety of factors such as the interests of the parties to the agreements, their purposes in making the agreements, the degree of competition from other manufacturers, and, not least, the possibility of increased concentration if these agreements are forbidden. As Mr. Justice Brandeis said in *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918):

"Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

Obviously it is unwise to dispose of such a complex question of law and business on summary judgment.

Such a disposition is proper only if the case is to be governed, not by legal precedent and business reality, but by arid legalisms torn from the only factual context that can give them life. Appellant's only request of this Court, then, is that a trial be ordered at which the Government will be required to bear the normal burden of showing unreasonableness.

**A. Sherman Act Precedents, As Well As the Common Law,
Support Reasonable Vertical Territorial Limitations**

No case has ever before held vertical territorial limitations *per se* illegal. Indeed, the relevant precedents support such agreements without exception.

The earliest case directly in point is *Phillips v. Iola Portland Cement Co.*, 125 Fed. 593 (8th Cir. 1903), *cert. denied*, 192 U.S. 606 (1904). There, a cement manufacturer agreed to sell cement to a jobber in the State of Texas, and the buyer agreed not to resell the cement outside of that state. The buyer then refused to accept the cement, and, when the manufacturer sued for damages, argued that the contract not to resell outside Texas violated Section 1 of the Sherman Act. The Circuit Court of Appeals for the Eighth Circuit, in affirming the judgment of the Circuit Court below, held squarely that the territorial limitation was lawful. The court said:

"If [a contract's] . . . necessary effect is to stifle competition, or to directly and substantially restrict it, it is void. But if it promotes, or only incidentally or indirectly restricts, competition in commerce among the states, while its main purpose and chief effect are to foster the trade and enhance the business of those who make it, it does not con-

stitute a restraint of interstate commerce within the meaning of that law; and is not obnoxious to its provisions. This act of Congress must have a reasonable construction. It was not its purpose to prohibit or to render illegal the ordinary contracts or combinations of manufacturers, merchants, and traders, or the usual devices to which they resort to promote the success of their business, to enhance their trade, and to make their occupations gainful, so long as those combinations and devices do not necessarily have a direct and substantial effect to restrict competition in commerce among the states. . . . The Iola Cement Company had no monopoly of the manufacture or sale of cement in the United States. It was surrounded by competing manufacturers. . . . [The territorial] restriction was not the chief purpose or the main effect of the contract of sale, but a mere indirect and immaterial incident of it." 125 Fed. at 594-95.

Also squarely in point is *Reliable Volkswagen Sales & Serv. Corp. v. World-Wide Automobile Corp.*, 182 F. Supp. 412 (D.N.J. 1960). In that case, a private action for violation of the Sherman Act, the complaint alleged that the defendant, a Volkswagen distributor, had agreed not to sell Volkswagen automobiles to dealers outside of its exclusive territory. The complaint put in issue the legality *et non* of the Volkswagen "system of distribution." 182 F. Supp. at 427. Circuit Judge Forman expressly held:

"... I am not persuaded that this system constitutes a per se violation of Section 1 of the Sherman Act." *Ibid.*

Two additional cases upholding territorial restraints on a buyer may be mentioned. *United States v. New-*

bury Mfg. Co., 36 F. Supp. 602 (D. Mass.), *motion to vacate denied*, 123 F.2d 453 (1st Cir. 1941); *P. Lorillard Co. v. Weingarten*, 280 Fed. 238 (W.D.N.Y. 1922). In both these cases, a promise to resell only outside the continental United States was enforced. In the *Newbury* case, the buyer was held to his word at the suit of the Government itself, which strenuously denied that the territorial limitation was invalid. Compare *Denison Mattress Factory v. The Spring-Air Co.*, 5 Trade Reg. Rep. ¶ 70,447 (5th Cir. Sept. 6, 1962); *Boro Hall Corp. v. General Motors Corp.*, 37 F. Supp. 999 (S.D.N.Y. 1941), *aff'd*, 124 F. 2d 822, *rehearing denied*, 130 F. 2d 196 (2d Cir. 1942), *cert. denied*, 317 U.S. 695 (1943) (promise not to set up a showroom or solicit customers outside specified area upheld). The Federal Trade Commission agrees that territorial limitations are not illegal *per se*, *General Cigar Co.*, 16 F.T.C. 537 (1932); Conf. Rul. No. 13, 1 F.T.C. 543 (1915), and two recent and carefully considered opinions of that body have scrupulously avoided departing from this holding. *Sandara Co.*, 3 Trade Reg. Rep. ¶ 15,945, at 20,766-67 (FTC June 13, 1962); *Snap-on Tools Corp.*, 3 Trade Reg. Rep. ¶ 15,546 (FTC Nov. 1, 1961).

These cases rest firmly upon the common-law doctrine of ancillary restraints of trade.⁷ The territorial limitations used by appellant in this case—like its customer limitations, see *infra* p. 37—are actually identical with restraints upheld at common-law if reasonable.

⁷ For the relevance of the common law, see, e.g., *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 497-500 (1940).

As Judge Taft put it, in summarizing the development of the common law up to his time:

"... no conventional restraint of trade can be enforced unless the covenant embodying it is merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of these fruits by the other party." * *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 274, 282 (6th Cir. 1898), *modified*, 175 U.S. 211 (1899).^{*}

Naked restraints of trade, Judge Taft explained, are void. They have no other purpose or effect beyond the suppression of competition. But ancillary restraints, being appropriate to the enjoyment of rights secured by a pre-existing legal relationship, "of partnership, or of vendor and vendee, or of employer and employee," *id.* at 290, are valid "if commensurate only with the reasonable protection of the covenantee in respect of the main transaction affected by the contract." *Id.* at 290-91.

Judge Taft summarized the rule of reason as applied to ancillary restraints as follows:

"For the reasons given, then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring

* Judge, later Chief Justice, Taft's opinion in *Addyston Pipe* is entitled to great deference. It was joined by Justice Harlan, sitting as Circuit Justice for the Sixth Circuit, and by Judge, later Justice, Lurton. Further, it has been lauded by this Court as a "classic opinion," *Apex Hosiery Co. v. Leader*, 319 U.S. 469, 496 (1940).

partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere, by competition or otherwise, with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant, or agent not to compete with his master or employer after the expiration of his time of service." *Id.* at 281.

The fourth class in this summary clearly includes the instant case."

The leading common-law case in this country on the validity of restraints on the buyer of personal property is *Oregon Steam Nav. Co. v. Winsor*, 20 Wall. 64 (1874). The issue there was the enforceability of a promise by the buyer of a steamer not to use the ship upon any waters of the State of California for a period of ten years. The restraint was upheld as a reasonable protection for the business retained by the seller, a company operating in California. Mr. Justice Bradley, speaking for the Court, announced the general principle of law that disposed of the case:

"a stipulation by the vendor of an article to be used in a business or trade in which he is himself engaged, that it shall not be used within a reasonable region or distance, so as not to interfere with

* For more recent instances of this fourth class, see *Cincinnati, P., B.S. & P. Packet Co. v. Bay*, 200 U.S. 179 (1906) (Holmes, J.); *Tri-Continental Fin. Corp. v. Tropical Marine Enterprises, Inc.*, 265 F.2d 619 (5th Cir. 1959); *United States v. Columbia Pictures Co.*, 189 F. Supp. 153, 178-79 (S.D.N.Y. 1960); *Restatement, Contracts* § 516(b) and comment (1932).

his said business or trade, is . . . valid and binding." 20 Wall. at 68.

As shown by the extensive discussion in 6A Corbin, *Contracts* § 1389 (1962), and 5 Williston, *Contracts* § 1642 (Williston & Thompson rev. ed. 1937), this rule as to the enforceability of ancillary restraints on the buyer of property accurately states the common law, both as it existed before the passage of the Sherman Act and as it is now applied by the courts apart from that or any other statute. At the risk of belaboring an obvious point, it may be said that the *Restatement, Contracts* § 515 (1932) summarizes the rule thus:

"A restraint of trade is unreasonable, . . . if it . . .

"(c) is based on a promise to refrain from competition and is not ancillary either to a contract for the transfer of goodwill or other subject of property or to an existing employment or contract of employment."

These principles exactly fit the instant case. White, for the purpose of benefiting its business of manufacturing and selling trucks, imposes upon buyers of trucks certain restraints ancillary to the main contract of sale. These restraints are valid if reasonable, and their reasonableness depends upon a large number of factors, including their effect upon the interests of the parties and of the public, and the particular competitive situation in the truck industry.

A wealth of common-law decisions upholds territorial restraints on the distribution of goods for resale.¹⁹

¹⁹ The law of England apparently is in accord. See *In re Austin Motor Co., Ltd.'s Agreements*, [1958] 1 Ch. 61 (1957); Wade, *Restrictions on User*, 44 L. Q. Rev. 51, 63 (1928).

Appellant will not burden the Court with an exhaustive enumeration. The state courts in what may fairly be described as a torrent of authority, have consistently reached this conclusion, always through application of the common-law doctrine of reasonable ancillary restraints. Many of the state cases have concerned the distribution of automobiles. *E.g.*, *King Motors, Inc. v. Delfino*, 136 Conn. 496, 72 A. 2d 233 (1950); *Johnston v. Franklin Kirk Co.*, 83 Ind. App. 519, 523, 148 N.E. 177, 179 (1925) ("the Franklin Automobile Company has a right to control its own output and make contracts with reference to the sale thereof . . ."); *McConkey v. Smith*, 112 Kan. 560, 211 Pac. 631 (1923); *Kessler v. A. W. Haile Motor Co.*, 127 Misc. 413, 217 N.Y. Supp. 182 (Sup. Ct. 1926).

In view of all this persuasive case law, it will occasion no surprise that the commentators, *e.g.*, 6A Corbin, *Contracts* § 1409, at 240 (1962), and the law reviews are solidly opposed to an undiscriminating *per se* approach in this area. See Kaapeke, *How To Distribute Your Products*, in 1962 N.Y. State Bar Ass'n *Antitrust Symposium* 58-60; Note, *Restricted Channels of Distribution Under the Sherman Act*, 75 Harv. L. Rev. 795 (1962); Jordan, *Exclusive and Restrictive Sales Areas Under the Antitrust Laws*, 9 U.C.L.A.L. Rev. 111 (1962); Robinson, *Restraints on Trade and the Orderly Marketing of Goods*, 45 Cornell L.Q. 254 (1960); Handler, *Annual Antitrust Review*, 11 Record N.Y.C.B.A. 369-81 (1956); Note, *The Resurgence of the Exclusive Territorial Distributorship as an Antitrust Problem*, 40 Minn. L. Rev. 853 (1956); Note, *The Exclusive Agency System: A Problem in Illegality*,

27 Colum. L. Rev. 838 (1927). *Accord*, *Att'y Gen. Nat'l Comm. Antitrust Rep.* 27-29 (1955).

One may well wonder how the Court below and the Government could disregard all these considered judgments. In the face of this body of law, it cannot conceivably be said that White's territorial limitations, viewed in isolation, as they were viewed by the Court below, "because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal" *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1 (1958). This startling result, so disruptive of widespread business arrangements, so cheerfully oblivious of legal history, can be reached only by a mechanical and artificial extension of two incompatible lines of cases.

The Court below first attempted to liken the contracts at issue here to price-fixing agreements. The latter eliminate only one kind of competition, it reasoned, while the contracts in suit suppress all competition. The Court appears to have overlooked that the contracts involved here do not eliminate all competition: they affect only intrabrand competition. White dealers remain wholly free to compete, in price as well as in other ways, with dealers of other truck manufacturers. Indeed, their ability to compete with other brands is enhanced. Beyond that, the same similarity-of-effect argument has been made by the Government before, and rejected by this Court. In the Government's brief in *United States v. Columbia Steel Co.*, 334 U.S. 495 (1948), at pp. 52-53, it was strongly urged that vertical mergers had the same effect as price-fixing.

and therefore were illegal *per se*. This Court did not agree. The Court said:

"The legality of the acquisition by United States Steel of a market outlet for its rolled steel through the purchase of the manufacturing facilities of Consolidated depends not merely upon the fact of that acquired control but also upon many other factors. Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration or otherwise, are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product." 334 U.S. at 524.

The Court below next reasoned that horizontal price-fixing and market division are illegal *per se*, and since this Court in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911), held that vertical price-fixing is just as bad as horizontal price-fixing, therefore it must now be held that vertical limitations on the territory of resale are just as bad as horizontal territorial restraints. It may be asked, in passing, why such a seemingly simple argument never commended itself to a single court before the filing of this case. But beyond that, the argument will not bear analysis. Essentially, its premise is that anything that has an effect similar to that of horizontal market allocation is equally to be condemned. That proposition, of course, proves too much, because vertical integration by acquisition of existing distributors and dealers would have the same effect, and yet would obviously not be illegal *per se* under the Sherman Act, *e.g.*, *United States v. Columbia Steel Co.*, *supra*, or even under Section 7 of the Clay-

ton Act. *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

Vertical territorial limitations, moreover, are basically different from horizontal restraints. The latter, as Judge Taft explained in *Addyston Pipe*, are illegal on their face because they are naked restraints of trade, with no other purpose than the stifling of rivalry among competing sellers. Vertical limitations, by contrast, are ancillary to the main lawful purpose of the contract of sale. They are intended to enhance and encourage competition against competing manufacturers, by ensuring that White dealers' energies will be expended not in petty skirmishes among themselves, but in the prosecution of the larger war against General Motors, Ford, and other giant competitors. It is clearly more important, in terms of benefit to the consumer, in whose behalf the antitrust laws should operate, that White be preserved as a vigorous and independent competitive force, than that White dealers be allowed to raid each other.

As this Court recently pointed out in *Brown Shoe Co. v. United States*, *supra*, 370 U.S. at 329, "the very nature and purpose of the arrangement" is a "most important . . . factor to examine" in considering the validity of transactions that admittedly have some restraining effect upon trade, but that, it is claimed, have such great beneficent effects as to be, on the whole, lawful. "[E]vidence indicating the purpose of the . . . parties, where available, is an aid in predicting the probable future conduct of the parties and thus the probable effects of the" contract whose validity is be-

ing questioned. *Id.* at 329 n.48. These words were spoken of mergers in the context of Section 7 of the Clayton Act. But if such factors are relevant in applying that statute, which is explicit and "narrowly directed," *Standard Oil Co. of California v. United States*, 337 U.S. 293, 312 (1949), then a fortiori they are relevant in the application of the generally worded Sherman Act.

The Court in *Brown Shoe* drew further support for its treatment of purpose as an important factor from cases under Section 3 of the Clayton Act. A "limited term exclusive-dealing contract," because it is "not inherently anticompetitive," is more leniently judged under that Section than a "tying contract," which is "inherently anticompetitive," 370 U.S. at 329-30. Even a "tying device" may be legal in extraordinary circumstances, for example, if it "is employed by a small company in an attempt to break into a market." *Ibid.*—A passage more antagonistic to a blind *per se* approach in antitrust matters could hardly be imagined. Surely, if all tying contracts are not *per se* illegal—and the Court's teaching in *Brown Shoe* is unmistakably that they are not—, vertical territorial limitations, whose purpose, like a merger of two small companies, see *id.* at 329, 331, 346, is to foster competition with more powerful rivals, cannot be *per se* illegal. *Brown Shoe*, in rejecting the "quantitative substantiality" theory of Section 7, presented a reproach to all those who seek easy *per se* rules; its whole spirit is opposed to such rigidity.

Furthermore, the *Brown Shoe* decision is important here for another reason. It points out that one of the

most important policies underlying Section 7 of the Clayton Act is "the desirability of retaining 'local control' over industry and the protection of small businesses," *id.* at 315-16. This Court has often been solicitous of small business, for just the same sound reasons as influenced Congress to enact Section 7. A good recent example is *State Board of Ins. v. Todd Shipyards Corp.*, 370 U.S. 451 (1962), decided the same day as *Brown Shoe*; there, the Court declined to overrule a line of doubtful cases because, *inter alia*, of a warning of "how severe the impact would be on small insurance companies should the old rule be changed." *Id.* at 457. This policy, which is nothing less than a postulate of our democratic society, see generally Brandeis, *The Curse of Bigness* (1934), may of course be taken into account in a Sherman Act proceeding. See *United States v. Columbia Steel Co.*, 334 U.S. 495, 507 n.7 (1948).

Unthinking *per se* condemnation of these contracts would threaten this policy in two ways. First, the only alternative for a manufacturer forced to abandon territorial limitations is not simply to keep on doing business in the old way, except without the territorial restraints; he might be forced to take over distribution for himself. Thus would the social benefits derived from the strength of a class of independent small businessmen be destroyed. This loss can hardly be the object Congress entertained when it passed the Sherman Act. Employees under centralized direction must not replace independent, self-employed entrepreneurs, and White—for its own business reasons—does not wish such an unfortunate transformation. Compare

Standard Oil Co. of California v. United States; 337 U.S. 293, 318-19 (1949) (Douglas, J., dissenting). Second, elimination of these contracts by other relatively small manufacturers may in the past "have contributed to the increasing concentration of production at the manufacturing level of the industry." Hewitt, *Automobile Franchise Agreements* 157 (1956). As Professor Hewitt, an authority in the field, explains the matter, concentration at the manufacturing level came about largely because small manufacturers' dealership structures had become fatally weak.

In sum, the territorial limitations at stake in this case have a long history of legality. Cases relied on by the District Court to strike them down typically involve horizontal agreements among competitors—a very different thing indeed from ancillary vertical limitations. Such vertical limitations have the express sanction not only of Judge Taft's scholarly opinion, but also of every later case directly in point, with the exception, of course, of this case.

B. Sherman Act Precedents, As Well As the Common Law, Support Reasonable Vertical Customer Limitations

As in the case of territorial limitations, the exaction of reasonable customer limitations has been upheld under the Sherman Act. Even total prohibition of resale is lawful under some circumstances. *D. R. Wilder Mfg. Co. v. Corn Prods. Ref. Co.*, 236 U.S. 165 (1915) (alternative holding); *Fosburgh v. California & Hawaiian Sugar Ref. Co.*, 291 Fed. 29 (9th Cir. 1923); *Kosuga v. Kelly*, 1957 Trade Cas. ¶ 68,714 (N.D. Ill. 1957) (alternative holding), *aff'd on other grounds*, 257 F.2d 48 (7th Cir. 1958), *aff'd*, 358 U.S. 516 (1959).

Several cases solidly uphold the validity of a distribution system such as that employed by White, a system, that is, that permits sales for resale only to authorized White outlets, and that reserves certain "house accounts" to the manufacturer. In *Green v. Electric Vacuum Cleaner Co.*, 132 F.2d 312 (6th Cir. 1942), cert. granted, 318 U.S. 753, cert. dismissed on motion of petitioner, 319 U.S. 777 (1943), a manufacturer forbade its dealers to sell (a) to any person who rebuilds traded-in or junk cleaners, or (b) to any wholesaler who resells to dealers who do not confine themselves to dealing in genuine parts bought from the manufacturer. This limitation was approved as not an "unreasonable or prohibited restraint of trade" 132 F.2d at 315. And in *Hickok Mfg. Co. v. Fairley Trading Corp.*, 117 N.Y.S.2d 874 (Sup. Ct. 1952), a promise not to resell through ordinary retail outlets was enforced by injunction over the objection that it violated the Sherman Act.

A case directly in point is *Roux Distrib. Co.*, 55 F.T.C. 1386 (1959), in which the Federal Trade Commission dismissed without dissent a complaint attacking a cosmetics manufacturer's distribution system. The system was far more tightly controlled than that used in this case by White. Roux sold to three classes of buyers: jobbers, who promised to resell only to drug wholesalers, beauty supply dealers, or other jobbers; drug wholesalers, who promised to resell only to drug stores, department stores, and similar retailers; and beauty supply dealers, who promised to resell only to beauty salons, beauty schools, and beauty operators. In the course of its opinion, the Commission said:

"Certain restrictions as to the resale of a product may violate the Sherman Act as well as Section 5 of the Federal Trade Commission Act. For example, under some circumstances a distributor of a trademarked article may not lawfully limit by agreement the persons to whom its purchaser may resell, particularly where the agreement is tied in with a system of distribution which includes the unlawful fixing of resale prices. *United States v. Bausch & Lomb Co.*, 321 U.S. 707, 721 (1944). We do not believe, however, that a restriction or limitation as to whom a purchaser may resell is illegal *per se*." 55 F.T.C. at 1388.

Language could hardly be more clear. After going on to consider whether Roux's system restrained competition unduly in practice, so as to violate Section 5 of the Federal Trade Commission Act, and holding that the evidence was insufficient to prove such a restraint, the Commission dismissed the complaint. *Accord, Revlon, Inc. v. Regal Pharmacy, Inc.*, 29 F.R.D. 169, 177 (E.D. Mich. 1961) (alternative holding); *Reliable Volkswagen Sales & Serv. Corp. v. World-Wide Automobile Corp.*, 182 F. Supp. 412, 427 (D.N.J. 1960). The Commission's holding in *Roux* is on all fours with this case. The District Court's attempt to distinguish it as simply a Federal Trade Commission Act proceeding with no Sherman Act aspects is feeble indeed. For, as everyone knows, a *per se* violation of Section 1 of the Sherman Act is ipso facto also a violation of Section 5 of the Federal Trade Commission Act. Therefore, any holding that a contract does not violate the latter statute must at least be a holding that it also does not violate, *per se*, the former statute.

The same common-law doctrine of ancillary restraints developed above in respect of territorial limitations applies equally to uphold reasonable limitations on the persons to whom the buyer of property may resell. The traditional rule is stated by the *Restatement, Contracts* § 515, *Illustration* 23 (1932):

"a provision making a conveyance of land or chattels to a particular person or persons a condition involving forfeiture, or a promise not to transfer to a particular person or persons, is valid."

Of course, particular kinds of restraints may be obnoxious to public policy, or unenforceable for some other reason. *E.g.*, *Shelley v. Kraemer*, 334 U.S. 1 (1948). But in general commercial limitations have been enforced if reasonable. For example, in the leading case of *Meyer v. Estes*, 164 Mass. 457, 41 N.E. 683 (1895), an English company sold an American firm electrotypes plates for the printing of illustrated books on natural history, with the proviso that the American firm would use the plates only to print books in America, and would sell them to no one, nor multiply them for purposes of sale. The American buyer broke its promise and sold the plates to another American company, which used them to print the books and sent 100 copies to England for sale. The English company, having placed the restriction on sale of the plates in order to protect its English business from just such competition (it had been publishing the books for sale in England, using another set of identical plates), sued the American buyer for breach of the limitation on resale. The Court held that the limitation was valid:

"The agreement on their [defendants'] part not to sell to other parties, nor to multiply them [the plates] for the purpose of selling, is in the nature of an agreement in restraint of trade. Considering the nature of the property, we are of the opinion that such an agreement is reasonable, and one which ought to be enforced between the parties to it." 164 Mass. at 464-65, 41 N.E. at 686.

Cf. British Motor Trade Ass'n v. Gilbert, [1951] 2 All E.R. 641 (Ch. D. 1951) (buyer of automobile may resell within two years only with consent of selling dealer).

One application of this general principle is to the situation in the instant case—a system for the distribution of goods for sale. In *Revlon Prods. Corp. v. Bernstein*, 204 Misc. 80, 119 N.Y.S.2d 60 (Sup. Ct. 1953), *aff'd mem.*, 285 App. Div. 1139, 142 N.Y.S.2d 364 (1955), a manufacturer of cosmetics sold to retail stores and to jobbers, the jobbers being required to promise to resell only to beauty shops and beauty schools. A retailer induced a jobber to sell to him. The manufacturer sued the retailer for damages and an injunction, claiming inducement of breach of contract. The Court held for the manufacturer, rejecting the retailer's argument that the restriction on the jobber was void as an illegal restraint of trade. "[A] manufacturer need not go into competition against himself," the Court said. He may elect "to deal with a certain class of customers personally. . . ." 204 Misc. at 81, 119 N.Y.S.2d at 62. *Cf. Nadell & Co. v. Grasso*, 175 Cal. App. 2d 420, 346 P.2d 505 (Dist. Ct. App. 1959), which enforced a promise not to resell spoiled

goods in ordinary retail channels without removing the manufacturer's trade name.

Appellant urges this Court to adhere to the clear line of Sherman Act and common-law decisions that customer limitations are lawful if reasonable. It does not ask that its own particular limitations be upheld at this time—only that a trial as to their reasonableness be ordered. As in the case of territorial limitations, the Government of necessity must be maintaining that all customer limitations are always illegal. A manufacturer of narcotics, for example, could not insist that its distributors resell only to retailers who meet objective tests of character and trustworthiness. Slightly damaged goods could not be sold on condition that they be resold only in an area where their maker does not usually do business. Such a rule is patently absurd. And yet, the Government's *per se* position leads it necessarily to condemn without a hearing even such obviously reasonable limitations.

CONCLUSION

The *per se* rules that the District Court attempted to promulgate are unprecedented and should not be allowed to stand. There is no body of experience in this Court, or any other, that justifies writing into law such an all-inclusive edict. Neither White nor any other business should be foreclosed from an opportunity to demonstrate the reasonableness of the challenged restrictions in the light of the business and competitive facts that may exist in each particular case. The maintenance of our competitive economy requires great regard for the individual circumstances of each

particular case, and there is nothing in the Sherman Act that justifies sweeping aside in this fashion long-established patterns of trade and distribution.

The judgment below should be reversed, and the cause remanded for a trial on the issue of the reasonableness of appellant's contracts.

Respectfully submitted,

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October 29, 1962

APPENDIX

“ § 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

“ Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intra-state transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. As amended July 7, 1955, c. 281, 69 Stat. 282.”

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 54

THE WHITE MOTOR COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 49-93) is reported at 194 F. Supp. 562.

JURISDICTION

This suit was instituted under Section 4 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 4. The judgment of the district court was entered on September 5, 1961 (R. 107). The notice of appeal was filed by the White Motor Company on October 26, 1961 (R. 112), and this Court noted probable jurisdiction on April 23, 1962 (R. 115; 369 U.S. 858). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15

U.S.C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 989.

STATUTE INVOLVED

The pertinent provisions of Sections 1, 3 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U.S.C. 1, 3, 4), commonly known as the Sherman Act, are as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.

* * * * *

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade, or commerce in * * * the District of Columbia, or in restraint of trade or commerce * * * between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, * * *.

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *.

QUESTIONS PRESENTED

The basic question is whether agreements by which a manufacturer limits the territories in which, and the customers to whom, its distributors and dealers may resell its products, are illegal *per se* under Section 1 of the Sherman Act. More particularly, the question is the *per se* illegality of the White Motor Company distribution system which, by written contracts:

1. Restricted each distributor and dealer to customers located in a specified geographic area;
2. Allocated certain named customers to a specified dealer or distributor;
3. Restricted the persons to whom White distributors and dealers might sell new trucks for resale;
4. Reserved certain classes of customers, including all State and federal governments, to White.

STATEMENT

On March 28, 1960, the United States filed an amended complaint (R. 1-7) in the District Court for the Northern District of Ohio charging appellant, The White Motor Company ("White"), with violating Sections 1 and 3 of the Sherman Act by restricting the geographic areas within which its distributors and dealers were permitted to sell White trucks and parts; by restricting the persons to whom distributors and dealers were permitted to sell trucks for resale; by prohibiting distributors and dealers from selling White trucks to any federal or state government or subdivision thereof; by fixing the resale prices for trucks and parts sold by distributors to dealers for resale; and by fixing the resale price on parts sold by distrib-

utors and dealers to certain designated customers—governmental subdivisions, national accounts and fleet accounts (R. 4, 5). On April 21, 1961, the district court granted the United States summary judgment on each of these grounds.² The case is now before this Court on direct review of that judgment of the district court.

WHITE'S SYSTEM FOR DISTRIBUTION OF ITS TRUCKS

White is a leading manufacturer of medium and heavy duty trucks (R. 4), with total annual sales of over 160 million dollars in 1955, 1956, and 1957 (R. 93). Its system for distribution of its trucks is as follows:

White sells trucks and parts directly to over 200 so-called "distributors" (R. 503);¹ to over 10 dealers (R. 503); and to various large users of its trucks.² Both these direct dealers and the distributors sell new trucks and parts to users (R. 3). In addition, some distributors resell new trucks and parts to over 80 dealers (R. 503) whom the distributors appoint with White's consent (R. 2). All of the dealers sell new trucks and parts only to users. Thus, White sells to distributors, dealers, and users; the distributors sell to dealers and users; the dealers sell only to users.

¹ A significant function of White's distributors is the sale of trucks to consumers. A substantial number of distributors apparently do not sell to dealers for resale (R. 61).

² In 1957, White itself sold \$20,344,000 or approximately 1/6 of its total output directly to "national accounts" and state and federal governments and their agencies and subdivisions. Appellant also sold \$42,392,000 or approximately 1/3 of its total output to "fleet accounts."

Although the distributors and dealers are not White's agents but are independent purchasers of White's trucks for purposes of resale (R. 429, 465, 484), White thoroughly regulates by contract most aspects of the distribution system. It is a party not only to its contracts with distributors and direct dealers but also to the contracts consummated between distributors and their dealers, which are executed on forms supplied by White and are subject to White's approval.

White's contracts with its distributors reserve for itself certain very large customers; assign each distributor a defined territory and require the distributor to sell only to customers having a place of business or purchasing headquarters within the distributor's territory; forbid the distributor to sell to any customer for resale by that customer unless the right to do so is granted by White in writing; and set the prices for the trucks sold to dealers and for the parts sold to "national," "fleet," and governmental accounts (R. 423-431).

The contracts between White and its "direct" dealers are similar to the distributor contracts in that such dealers also are restricted as to territory; prohibited from selling trucks to certain classes of customers or for resale without the consent of White; and required to maintain prices set by White on sales of parts to "national," "fleet," and governmental accounts (R. 454-458, 462-466).

The contracts between distributors and dealers contain similar provisions imposing territorial limitations

and customer allocations as to truck sales, prohibiting sales for resale, and requiring resale price maintenance on parts sold to "national," "fleet," and governmental accounts. An additional provision in these contracts binds the distributor to resell trucks to the dealer at prices set by White (R. 471-476).

In sum, as the district court found (R. 60-62), all distributors, direct dealers, and dealers agree and contract with White: (1) not to sell White trucks except to firms having a place of business within their assigned territory; (2) not to sell to particular named customers or to the federal or any State government or a subdivision thereof; (3) not to sell to any person for resale without White's consent; and (4) not to depart from certain resale prices set by White.

THE DECISION OF THE DISTRICT COURT

On April 18, 1960, the United States filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the ground that White's system of agreements was illegal *per se* under the Sherman Act, entitling the United States to judgment as a matter of law. The motion was granted on April 21, 1961.

The gist of the opinion rendered by the district court (R. 49-93) is summarized in the following passage (R. 87-88):

The Sherman Act does not sanction the suppression by a manufacturer of competition

³ Sales to all federal and state governmental agencies totaled \$1,587,000 in 1955, \$1,312,000 in 1956, \$15,097,000 in 1957 and \$19,883,000 for the first seven months of 1958 (R. 93).

among its purchasers or subpurchasers, *Ethyl Gasoline Corp. v. United States*, 309 U.S. 436, 452 (1940); nor does it permit limitation on sales to certain customers or classes of customers by vertical combination, *Dr. Miles v. Park*, 220 U.S. 373, 400 (1911); *United States v. Bausch & Lomb Co.*, 321 U.S. 707, 723 (1944); especially when part of a scheme to fix or maintain resale prices, *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44, 45 (1960). White can fare no better in a system of identical contracts with its distributors and dealers allocating territories and customers than could the distributors and dealers themselves "if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other." *Dr. Miles v. Park*, 220 U.S. 373, 408 (1911).

Accordingly, the district court issued its final judgment on September 5, 1961, declaring invalid, and enjoining the use of, those provisions in the franchise contracts (R. 109):

(A) purporting to impose limitations or restrictions on the territories within which, or persons or classes of persons to whom distributors and dealers may sell trucks, and

(B) purporting to obligate distributors and dealers to sell trucks and parts at prices or discounts established by the defendant.

White's notice of appeal challenged only the district court's ruling that the territorial divisions and the customer allocations are unlawful. White did not

appeal from the court's ruling that the provisions fixing resale prices were unlawful.*

SUMMARY OF ARGUMENT

I

Appellant's agreements eliminating competition among its distributors and dealers by allocating exclusive territories to each are illegal *per se*. Agreements that competitors shall not compete have always been held illegal without consideration of their actual effects. They cannot be justified by offering to prove that, in the particular instance, competition will be bad for the industry or the public, or even self-defeating. Under these rules agreements among competitors dividing customers or markets are illegal *per se* and White's distributors or dealers could not justify a division of markets identical to that instituted by White by attempting to show that the collateral effects of eliminating their competition would be a beneficial increase in competition with other makes of trucks. These principles have been firmly established by the decisions of this Court.

The agreements between White and its dealers and distributors dividing the customers and markets in which the latter compete are likewise illegal *per se* as explicit agreements that potential competitors shall not compete. The elimination of competition is total

*The notice of appeal also presented the question whether "the judgment entered by the District Court is improper in that it does not sufficiently identify the provisions of said contracts which are adjudged to be illegal" (R. 114). Since this question is not discussed in appellant's brief on the merits, we assume it is no longer in issue.

and identical to the effects of an admittedly illegal agreement among the dealers themselves. White has no justification which could not also have been made for an agreement among its purchasers themselves, but neither vertical nor horizontal divisions of the market can be justified, and for the same reason: Congress has authoritatively determined that the evils of agreements whose function is to restrict competition among competitors outweigh any benefits from the restriction. *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373, 408. Each of the justifications offered by appellant for dividing the market among its distributors and dealers is, at bottom, an argument that competition is undesirable and is thus no more than an invitation to this Court to reconsider the legislative premises of the Sherman Act. In addition, each of the legitimate business ends of a manufacturer's division of markets can be, and are generally, obtained without restraining competition among its purchasers in the sale of its product.

A full inquiry into the long-term effects of territorial restrictions such as White's would be incredibly prolonged and complicated and would, in all probability, be fruitless. Moreover, even if there were a relevant theoretical distinction between market divisions voluntarily undertaken by manufacturers and those instigated by dealers, any such distinction would not be administerable in practice because of the inter-related motivations of the dealers and the manufacturer which go into any decision by a manufacturer to divide its purchasers' markets.

Finally, this Court has already determined that there is to be no distinction between vertical and horizontal agreements to restrain competition. The fact that a manufacturer has good business reasons for an agreement to eliminate competition among its dealers was held to be irrelevant in considering the validity of the agreement in *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373. In *United States v. Bausch & Lomb Co.*, 321 U.S. 707, this Court held invalid a manufacturer's prohibition of sales for resale by its customers without its approval in terms and for reasons that would include not only White's identical requirements but also its similar territorial restrictions. Even at common law a manufacturer's restraint on his customer's free use and sale of a product purchased in the ordinary course of business would be a prohibited restraint of trade.

II

Appellant's contracts eliminating competition in the sale of its trucks by forbidding distributors to sell to certain classes of customers are also illegal *per se*. Its contracts reserving certain customers to itself are, under *United States v. McKesson & Robbins*, 351 U.S. 305, simply contracts among potential competitors not to compete for certain customers. Such contracts have long been held illegal *per se*. Its contracts prohibiting sales to any customer for resale without its approval are illegal under *United States v. Bausch & Lomb Co.*, 321 U.S. 707, which held indistinguishable agreements to be in violation of the Sherman Act.

ARGUMENT

I. APPELLANT'S AGREEMENTS ELIMINATING COMPETITION AMONG ITS DISTRIBUTORS, AND ALSO AMONG ITS DEALERS, BY ALLOCATING AN EXCLUSIVE SALES TERRITORY TO EACH, ARE PER SE UNLAWFUL CONTRACTS IN RESTRAINT OF TRADE

Section 1 of the Sherman Act condemns all contracts and combinations which restrain competition without other significant business justification than the consequences supposed to flow from the restriction. No further inquiry into the reasonableness of the restraint is required or permitted. " * * * there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 210; division of markets, *United States v. Addyston Pipe & Steel Co.*, 85

F. 271, aff'd, 175 U.S. 211; group boycotts, *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U.S. 457; and tying arrangements, *International Salt Co. v. United States*, 332 U.S. 392." *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5.

In stating that an agreement for a "division of markets" was unlawful *per se*, the Court, in *Northern Pacific*, drew no distinction between vertical and horizontal agreements. The Court has long held that vertical and horizontal price fixing agreements are equally unlawful *per se*. We submit that agreements between a manufacturer and his distributors providing for a division of markets among the distributors are as unlawful *per se* as a division among the distributors themselves. There is no reason for engrafting an exception upon the general rule outlawing this category of restraints of trade.

A. AGREEMENTS AMONG COMPETITORS WHICH ASSIGN TO EACH AN EXCLUSIVE GEOGRAPHICAL PORTION OF THE MARKET ARE UNLAWFUL PER SE

Where an agreement provides explicitly that potential competitors shall not compete and any benefit to the parties from the agreement is meant to follow as the consequence of such a restriction on the free play of competition, the soundness of applying a *per se* rule of illegality is dictated by three considerations. *First*, there is no need to consider the actual effects of the agreement upon competitive trade because: (a) it can be assumed that the parties to the agreement had basis for their expectation of benefit from the intended restriction of competition and (b) even if the parties

were wrong in believing that their agreement would affect competitive conditions in the market, there is no harm in enjoining the enforcement of an agreement which could have been of benefit to them only if competition had been affected. *Second*, there can be no valid justification for an agreement the benefits of which are thought to depend upon a restriction of competition among parties who would otherwise compete. The only possible justification—that competition is, in the particular situation, harmful to the public or self-destructive—runs counter to the enacted philosophy of the Sherman Act. *Third*, even if the statute left the question open for judicial inquiry, an investigation into the desirability or undesirability of competition—or of one form of competition as opposed to another—would be incredibly complex and prolonged, and often fruitless.

For these three reasons the Court has held unlawful—without consideration of effects or asserted justification—agreements fixing prices,⁵ fixing other terms of doing business,⁶ restricting volume of sales or production,⁷ boycotting a customer or supplier,⁸ and dividing markets.⁹ In none of these instances is a further showing of an adverse effect on the market necessary. Moreover, as to justification, these cases stand for the

⁵ *United States v. Trenton Potteries Co.*, 273 U.S. 392.

⁶ See, e.g., *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30; *United States v. First National Pictures*, 282 U.S. 44.

⁷ Cf. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150.

⁸ *Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457.

⁹ *Timken Roller Bearing Co. v. United States*, 341 U.S. 593.

proposition that contracts or combinations the immediate function of which is to restrict competition cannot be justified by offering to prove that, in the particular instance, competition will be bad for the industry or the general public or that, in the end, it will be self-defeating.

Thus the Court has noted with respect to price-fixing agreements that:

* * * Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy.¹⁰

and the Court has held that competitors cannot agree together to fix *maximum* resale prices for their distributors whether or not such an agreement promises to benefit the ultimate consumer:

* * * For such agreements, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment.¹¹

Nor can the desirability of individual, competitive decision-making be challenged where what is involved is a refusal to deal. Competitors cannot join together to stop dealing with a distributor who is violating the antitrust laws,¹² or refuse to sell to any re-

¹⁰ *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 226, n. 59.

¹¹ *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 213.

¹² *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 214.

tailor who deals in copies of their dresses or fabrics" although in each case it could be, and has been argued that the agreement was to the benefit of the public. As this Court stated in *Eastern States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600, 613:

The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe Co. v. United States*, 175 U.S. 211, 241, 242.

The policy of the Sherman Act is that the most efficient use of economic resources and the most desirable distribution of economic power results from the separately made choices of buyers and sellers in a competitive marketplace. This statutory decision cannot be reversed by a contention that, in the particular case, competition will prove to be contrary to the public interest. "The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of the parties, and it may be, of some good results." *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 49.

¹³ *Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457.

2. The established law regarding a division of markets among competitors is, as we have noted, but one facet of these more general rules. This Court has consistently held for over sixty years that agreements among competitors to allocate markets are illegal *per se*, for the plain purpose of such agreements is to eliminate competition among potential competitors. *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 596-599; *United States v. National Lead Co.*, 63 F. Supp. 513 (S.D. N.Y.), affirmed, 332 U.S. 319; *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 497; *United States v. American Tobacco Co.*, 221 U.S. 106, 182; *Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211, 241.

Offered justifications for such agreements must fail because they necessarily involve a contention, which has been rejected by the Sherman Act, that competition should be restricted as harmful in the particular context. Thus, for example, in *United States v. National Lead*, *supra*, the contention that substantial public benefit had resulted from a division of markets was rejected by Judge Rifkind in these terms (63 F. Supp. at 525):

* * * during the regime of the combination, the art has rapidly advanced, production has increased enormously and prices have sharply declined. The evidence does show as much; but it does not follow that the public interest has not been abused. Indeed, the major premise of the Sherman Act is that the suppression of competition in international trade is in and of itself a public injury; or at any rate, that

such suppression (is a greater price than we want to pay for the benefits it sometimes secures. * * * The economic theory underlying the Sherman Act is that, in the long run, competition is a more effective prod to production and a more trustworthy regulator of prices than even an enlightened combination.

It is clear under these cases that a division of markets by agreement among the distributors and dealers of White trucks could not be justified by the claim that the customers in each allocated territory would be better served by the territorially restricted and concentrated attention of one distributor than by the diffused attention and competition of a number of distributors. It is even plainer that such a horizontal division of markets by White distributors and dealers could not be justified by a claim that, without the security against intra-brand competition granted by the agreement, they would not be willing or financially able to continue to devote their time to the sale of White trucks in effective competition with the trucks of General Motors, Ford, and International Harvester. As we now show, a similar division of markets among White's distributors and dealers which is accomplished by agreements between them and White, rather than by agreement among themselves, is equally illegal *per se*.

B. AGREEMENTS BETWEEN A MANUFACTURER AND DEALERS IN ITS PRODUCTS WHICH ASSIGN EACH PURCHASER AN EXCLUSIVE GEOGRAPHICAL PORTION OF THE MARKET ARE ALSO ILLEGAL PER SE

The three grounds discussed in *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 5, for hold-

ing an agreement illegal *per se* are fully applicable to an agreement between a manufacturer and its independent distributors allocating a competition-free zone to each distributor: (1) the anticompetitive consequences of such agreements are identical with the effects of horizontal divisions of the market; (2) the agreements have no redeeming virtue to justify their anticompetitive effects; and (3) any attempt to investigate the reasonableness of each particular agreement would be hopelessly involved and almost certainly fruitless.

*1. *Territorial restrictions effected by agreements between a manufacturer and its dealers seriously restrain competition.*

• White does not, and cannot, contend that its system of distribution dividing the territorial market through agreements with each distributor or dealer has any less tendency to restrain competition among the distributors and dealers than a series of horizontal agreements among the distributors and dealers themselves. Regardless of whether they assume a horizontal or a vertical form, the intended and actual effect of agreements dividing a market territorially is a far more complete destruction of competition than is the intent or effect of any of the other agreements which are unlawful *per se*. Unlike an agreement to set the price or some other term of a transaction for several competitors, an agreement to divide markets does not leave open the many forms of competition which are not in terms of price or of some other agreed-upon term. All competition is eliminated between the beneficiaries of an agreement

dividing markets. Each is freed by contract from any limitations on his economic power which depend upon the availability of the others as alternative sources of supply for the goods or services furnished. Within his territory each is assigned the economic power of all the agreeing competitors to set prices, to determine other terms of dealing, and to refuse to deal with particular customers. Each competitor's territory is made an economic island isolated from all competition from the other parties to the division of markets.

A customer wishing to buy a White truck is forced, by the terms of the agreements in this case, to deal with only one seller. The agreement is strict in this regard. Not only will the prospective buyer be denied the opportunity to deal with a neighboring distributor that might otherwise come to him and seek his custom but even if the prospective purchaser is willing to travel to a neighboring territory, his offer of purchase must be rejected unless he has "a place of business and/or purchasing headquarters in said territory" (R. 425). It is, of course, true that, to whatever extent a prospective customer considers other makes of trucks as desirable as White trucks, he will have available the competition of alternative manufacturers; but for a number of sound reasons the existence of interbrand competition has never been found a justification for an explicit agreement to eliminate competition, whether it takes the form of a division of territories, or price fixing, or any of the other *per se* violations discussed above. See, e.g., *United States v. McKesson & Robbins*, 351 U.S. 305.

The very function of the *per se* prohibitions of anti-competitive agreements is to prohibit restrictions on competition without undertaking a prolonged and often inconclusive analysis of their actual effects in the market.

2. *There is no business justification for the territorial restrictions effected by the agreement between White and its distributors and dealers*

We have noted above¹⁴ that White's dealers would not be heard to justify an agreement to divide markets, because the very function of the agreement is to eliminate competition protected by the Sherman Act. There is no reason why the desirability of competition among those selling White trucks should be more of an open question for White itself.

The two types of agreement have identical effects upon competition and every justification White can assert could, but for the *per se* rule, be asserted by its dealers as well. White, no less than its dealers, is frankly seeking the benefits of an agreement that potential competitors shall not compete. The only asserted basis for a distinction between White and its dealers is said to be that the elimination of competition by vertical agreements may accomplish legitimate business ends for White. But even this basis fails, for White's desire to obtain an improved competitive position *vis-a-vis* other automobile manufacturers by eliminating competition among its dealers is no more legitimate than the desire of White dealers to improve their competitive position *vis-a-vis* General Motors.

¹⁴ *Supra*, pp. 17-18.

dealers through an agreement dividing the market for White trucks among themselves. The reason the attempted justifications fail is the same in each case: the Congress has authoritatively decided that the evils of agreements whose function is to restrict competition among parties who would otherwise compete outweigh any benefits resulting from the restriction. It follows that the present case is governed by *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373, 408, where this Court held that a manufacturer:

* * * can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other. If the immediate advantage they would thus obtain would not be sufficient to sustain such a direct agreement, the asserted ulterior benefit to the complainant cannot be regarded as sufficient to support its system.

White cannot justify imposing a price-fixing agreement upon its dealers. *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373. It could not justify requiring its dealers to boycott a class of their competitors. *United States v. Bausch & Lomb Co.*, 321 U.S. 707. By analogy, we submit, it cannot justify imposing a division of markets upon its dealers that they could not lawfully establish among themselves.

Each of the justifications offered by White for dividing the market among its distributors and deal-

ers is, at bottom, an argument for the elimination of competition and is thus no more than an invitation to this Court to reconsider the legislative premises of the Sherman Act.

First, White says that it can avoid the duplication of effort among its distributors and dealers and improve its own position in the market by allocating exclusive sales territories to each so that "dealers' competitive energies will not be directed against each other—a conflict from which the manufacturer derives no ultimate benefit—but rather against the dealers of competing manufacturers" (Brief for Appellant, p. 11). The function of the agreement, thus described, is to restrain competition—the very thing the Sherman Act forbids—and thus the argument stands as its own condemnation. The policy of the Sherman Act does not prefer one form of competition to another. The Act is based upon the philosophy that the most efficient distribution of trucks, as of any other product, will result from intra-brand competition between the sellers of one brand (in this case, White trucks) in addition to competition between those sellers and the dealers in other brands or models. One of the costs of competition is that there is no division of the labor of selling. Time and effort are always spent "unprofitably" by the dealer who tries but fails to sell his product in a competitive market, but the Sherman Act is a conclusive legislative determination that this "waste" is more than offset by the advantages of unrestricted competition. The statutory determination cannot be set aside because the manufacturer of a particular product offers

to prove that it can gain little or nothing from competition among the dealers in its product and may gain sales by eliminating what it regards as the wastes of competition.

Next appellant argues that it "has built up substantial good will in its organization of independent dealers and distributors" because its contracts assure them that "they will have the security of getting the easier, large-volume White customers in their areas" and, after spending valuable time "softening [a customer] up," will not lose the sale "to another White dealer who jumps territorial boundaries at a strategic moment and snatches away the pre-sold customer" (Appellant's Brief, pp. 12-13). It is hardly necessary to point out that this is nothing more than an argument that appellant has built up good will among its dealers by promising them protection against competition. Manifestly, the Sherman Act does not permit a manufacturer to justify giving dealers a form of immunity from the antitrust laws on the ground that that the dealers like it, even though offering such a bonus is a good way to obtain dealers who can increase White's own sales in the market for trucks. The benefits of competition-free selling are not appellant's to confer. The benefits of competition are guaranteed to the purchasing public by Section 1 of the Sherman Act.

Finally, appellant urges that individual dealers need the "cream" of higher profits that comes from selling "the easier large-volume White customers" without competition, in order to have the financial strength to sell "less lucrative accounts" and build up

strong service departments (Appellant's Brief, pp. 12-13). Price competition among the sellers of the same product might, perhaps, tend to limit the possibilities of competition with other brands in terms of repair services, advertising and displays, or other sales services. From appellant's standpoint it is not unreasonable to believe that the added financial return lost by price competition among its dealers seeking a customer who would have purchased a White truck at a higher price could have been better spent by some one dealer on advertising or repair facilities. But the Sherman Act does not recognize a class of customers who can be denied the benefits of competition in order to yield "cream" to dealers with which they may seek to increase their total sales. The policy of the Sherman Act is, that the proportion of time, money and effort to be devoted to inter-brand rather than intra-brand competition, and to each of the inducements offered by sellers to buyers, is to be determined by the free decisions of individual sellers, not by agreements between a manufacturer and its purchasers or by agreements among the sellers themselves. It is not for appellant to eliminate one significant aspect of competition in the sale of trucks, even though it can show that its profits would be greater if it could substitute inter-brand for intra-brand competition.

It has also been suggested that territorial limitations vertically imposed upon dealers by a manufacturer have one putative justification that distinguishes them from horizontal agreements among dealers dividing the territorial market—that the dealer who is confined to a defined territory "will compete

more aggressively in that territory in order to achieve a profitable level of sales, and thus produce lower rather than higher prices to the consumer." See Turner, *Agreement under the Sherman Act*, 75 Harv. L. Rev. 655, 699. One answer, pointed out above, is that the contracts, whether vertical or horizontal, seek to substitute agreed territorial restrictions of time and effort for the independent allocations which would be made by individual firms in response to the forces in a free market. Furthermore, the distinction, as we show below, is wholly impracticable whatever its academic merit. See pp. 32-34 below. And a manufacturer has ample ways of securing dealers who will devote to a particular area the time and effort the manufacturer desires without his restraining them from also seeking business elsewhere. Professor Turner concludes that "territorial limitations—in the light of their obvious susceptibility to anti-competitive misuse—are more restrictive than necessary to achieve the legitimate goal, in the light of such restrictive alternatives as a clause assigning each dealer a territory of primary responsibility which he agrees to use his best efforts to develop" (*Ibid*).

Thus, White has a wide and effective range of tools for developing a network of distributors and dealers who are financially sound and capable of vigorously promoting the sale of its trucks in every market. It may select whatever distributors and dealers it wishes and offer them, in broad measure, such advantageous terms or other assistance as it desires. As suggested by Professor Turner, it may require each to stipulate that it will use its best efforts to develop

a particular territory, and, in many contexts, the undertaking might be made more precise by requiring the expenditure of specified amounts of time and money in sales promotion within that area. The district court has held in this case that appellant may even offer its dealers exclusive franchises—that is to say, it may agree not to sell its trucks to another dealer with a place of business in the same territory. The district court also suggested that appellant may, at least absent a factual showing of significant anti-competitive effects, insist upon contractual provisions with its distributors and dealers giving it the right to regulate the location and appearance of showrooms, the maintenance of adequate repair and service facilities, the employment of courteous, skilled and trained sales personnel, the compliance with local laws and regulations, the maintenance of good credit ratings or the assumption of primary responsibility for sales coverage for specified areas and classes of customers. White might reserve the right to enforce its requirements by cancellation of a dealer's franchise or some lesser sanction. There is no justification, therefore, for an agreement that seeks to accomplish these ends by destroying the very competition that the Sherman Act is intended to preserve.

The methods open to White to control the distribution of its product have been found adequate by American industry in general, and the automobile industry in particular. In 1955, H.R. 6544 (84th Cong., 1st Sess.) was introduced as an amendment to Section 5(a) of the Federal Trade Commission Act. It provided in pertinent part:

(7) Nothing contained in this Act or any other Act shall render unlawful any contracts

or agreements in which a manufacturer requires his distributor to agree that he will sell only within a designated geographical area and will refrain from selling outside said area * * *.

The background of the bill, as explained during the hearings by Judge Barnes, the Assistant Attorney General in Charge of the Antitrust Division, was this:¹⁵

In 1949, during the course of an investigation relating to the distribution of automobiles, the Department of Justice expressed the view that territorial security provisions of this type raised serious questions under the antitrust laws. Thereafter, the leading automobile manufacturers removed from their agreements all provisions for territorial security, and this was a voluntary removal, including those in the form of service commissions and liquidated damages.

During the hearings, representatives of the automobile industry expressed their opposition to the bill with significant unanimity.

A representative of Ford Motor Co., Mr. Crusoe, Executive Vice President, Car and Truck Division, stated:

In view of our unsatisfactory experience with territorial security provisions in the past and the apparent difference of opinion on this subject among our dealers, we do not believe that restrictive provisions in sales agreements au-

¹⁵ Hearing Before a Subcommittee of the House Committee on Interstate and Foreign Commerce on Automobile Marketing Legislation, 84th Cong., 1st Sess., p. 362 (1956) (hereinafter cited "Hearing").

thorized by [H.R. 6544] would be welcomed by our dealer body as a whole, or would be in the best interests of our company or the public. [Hearing, p. 248.]¹⁶

Similar opposition to territorial allocation was expressed by representatives of General Motors (Hearing, p. 160), American Motors ("American Motors is not in favor of any legislation, permissive or otherwise, that restricts the right of the customer to choose any dealers from whom he desires to purchase" (Hearing, p. 285)), and Chrysler Corporation (Hearing, p. 323).

The retreat from territorial restrictions has not been limited to the automobile industry. Large and small industrial concerns of every sort have abandoned similar restrictive systems without litigation and have entered into appropriate consent decrees.¹⁷ There is,

¹⁶ Similar statements were made by Henry Ford II, who characterized territorial allocation as "unworkable" and "contrary to the public interest". Hearings Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on Automobile Marketing Practices, 84th Cong., 2d Sess., p. 978.

¹⁷ See e.g., *United States v. Scott Aviation Corp.*, 1961 CCH Trade Cases ¶ 70,148 (W.D. N.Y.); *United States v. Bostitch, Inc.*, 1958 CCH Trade Cases ¶ 69,207 (D. R.I.); *United States v. Rudolph Wurlitzer Co.*, 1958 CCH Trade Cases ¶ 69,011 (W.D. N.Y.); *United States v. Philco Corp.*, 1956 CCH Trade Cases ¶ 68,409 (E.D. Pa.); *United States v. Libbey-Owens-Ford Glass Co.*, 1948-1949 CCH Trade Cases ¶ 62,323 (N.D. Ohio); *United States v. Arnold Schriinn & Co.*, 5 CCH Trade Reg. Rep. ¶ 70,445 (N.D. Ill.); *United States v. American Type Founders Co., Inc.*, 1958 CCH Trade Cases ¶ 69,065 (D. N.J.); *United States v. Necchi Sewing Machine Sales Corp.*, 1958 CCH Trade Cases ¶ 68,957 (S.D. N.Y.); *United States v. AMI, Inc.*, 1957 CCH Trade Cases ¶ 68,758 (W.D. Mich.); *United States v. J. P. Seeburg Corp.*, 1957 CCH Trade Cases ¶ 68,613 (N.D. Ill.).

in short, no reason to believe that a system of territorial restrictions is essential to efficient marketing of a manufacturer's product.

3. *The attempt to investigate the reasonableness of White's territorial restrictions would be excessively prolonged and complex, and almost certainly fruitless*

Although the grounds discussed above are the primary bases for the rule that condemns as illegal *per se* agreements that potential competitors shall not compete, it has the further advantage of bringing a measure of certainty into antitrust law. As the Court explained in the *Northern Pacific* case (356 U.S. at 5)—

This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken. * * *

This Court has refused every invitation to investigate the nebulous and long-range effects of agreements whose function is to prevent competition among competitors. Frequently it has been argued, with some plausibility, that a particular restriction upon competition would benefit the industry and even the competitive economy as a whole. Price competition, it has been argued, would ultimately destroy all competition, and enforcement of a *per se* rule would be

self-defeating.¹⁸ Offers have been made to prove that the prices were "reasonable."¹⁹ The participants in a trade boycott offered to prove that its "practices * * * were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer from the devastating evils flowing from the pirating of original designs and had in fact benefitted all four."²⁰ The investigation of such ultimate possibilities would be incredibly long and complicated. The answer, in all probability, would be too uncertain to offset the plain and immediate harm. The Court has therefore concluded that the Sherman Act is best effectuated by forbidding every agreement to eliminate competition, without attempting to predict whether the agreement would or would not ultimately benefit the public.

In the present case any attempt to trace and assess the ultimate economic effects of White's agreements restraining competition would be not only incredibly prolonged and complex but also almost certainly futile. Each of White's justifications involves a matter of almost irresolvable dispute. The elimination of competition among its distributors may, as White contends, result in their devoting greater effort and resources to competition with dealers in other makes of trucks; but it may also result only in higher profits for either the dealers or White without any increase in interbrand competition. Similarly, it is impossible to know what sales volume or prices would result

¹⁸ *United States v. Joint Traffic Assn.*, 171 U.S. 505.

¹⁹ *United States v. Trenton Pottery Co.*, 273 U.S. 392.

²⁰ *Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457, 467.

from competitive selling. A dealer who is free to enjoy the profits from "cream" customers because he possesses a territorial monopoly may or may not use the added profits to finance the costs of "scouring" for hard-to-get customers or of competing with General Motors; the increase in easy profits may as easily reduce as increase the dealer's incentive to make additional, less profitable sales. Again, competition among White distributors might well result not in poorer repair facilities but in efforts to secure more sales by improving the repair services to which White attaches such importance.

Even if these matters could be fruitfully resolved by a trial, their resolution would only lead to further inquiries, with even wider-ranging implications. What is the importance of competition in services or increased selling effort as opposed to price competition? What is the importance of *interbrand* as opposed to *intra*brand competition? Are White's restrictions excessive in the amount of territory allocated to any or all dealers, in the duration of the allocation, or in any other way? Will White's restrictions remain reasonable if its share of the market increases? Should White's competitors be free to respond to White's plan with similar territorial restrictions, and will this result in oligopolistic pricing at the dealer level? These are only a few of the issues relevant to a trial of the "reasonableness" of any particular set of territorial restrictions. Nor could one be content with a single investigation. Business conditions change. The effect of restricting competition among dealers today may

be different tomorrow. The Sherman Act does not put the government to the burden of such prolonged inquiries or constant investigation of the shifting effects of agreements that potential competitors shall not compete. *United States v. Trenton Potteries Co.*, 273 U.S. 392, 397-398.

The same objection applies to the effort to distinguish between (a) territorial restrictions imposed by a manufacturer upon distributors allegedly for the purpose of increasing his own sales and (b) allocations of territory made for their benefit by horizontal agreements among the dealers. Certainly the form alone cannot be decisive. If the dealers joined together to force the manufacturer to impose territorial restrictions, the resulting agreements would be illegal notwithstanding that they took the form of a series of agreements between the manufacturer and the dealers.²¹ Even if a single dealer or distributor forced the manufacturer to institute a division of markets to eliminate competition with the other dealers, the agreement would surely be illegal despite its vertical form.²² No workable distinction can be drawn in terms of whether the dealers or the manufacturer initiated the division of markets. Their motivations are inextricably intertwined; indeed one purpose of such agreements is said to be the indirect benefit to a manufacturer of allowing him to offer his distributors the immediate benefits of an agreement

²¹ See *United States v. Frankfort Distilleries, Inc.*, 324 U.S. 293.

²² See, *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 228-230.

they could not accomplish by themselves. No purpose of the antitrust laws would be served by making legality turn on such questions as whether the manufacturer, formally or informally, polled his dealers to discover their wishes before imposing the agreement or whether the manufacturer or its dealers first suggested the territorial restrictions. A rule that condemned vertical agreements only when forced upon the manufacturer by an illegal combination of dealers, such as a group boycott, would permit a multitude of formally vertical contracts that divided territory for the benefit of dealers. Finally, it is hardly necessary to add that a distinction between market-division agreements in terms of which party is the moving force would provide a constantly shifting standard; an agreement initiated by a manufacturer for his sole benefit might survive, after a period of time, only because of the wish of the distributors.

C. THE DECISIONS OF THIS COURT FORECLOSE ANY DISTINCTION BETWEEN HORIZONTAL AND VERTICAL DIVISION OF MARKETS

The district court correctly held that the present case is controlled by this Court's decision in *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373, that the manufacturer of a proprietary medicine could not impose a uniform resale price on the distributors and retailers of its product. There, as here, it was established law that the distributors and dealers could not enter into an agreement among themselves identical to that imposed upon them by the manufacturer. The central issue concerned the validity of a claim that the legitimate business purposes of the manufacturer could justify the institution of

a system of restraints upon competitors that was designed to benefit the manufacturer through the medium of eliminating competition among its dealers and distributors.

Dr. Miles Medical Company attempted to justify its agreements by alleging (220 U.S. at 374-375) that its sales depended upon the good will of retail druggists and upon the reputation of its product; that cut-rate sales of its product destroyed the good will of its retail outlets who could not realize sufficient profits and destroyed the reputation of its product for superior quality; and that the inadequate return of its outlets was insufficient to enable them to market its product properly.

In an opinion by Justice Hughes, the Court rejected these defenses in terms very similar to those urged above. There is no reason, the Court held, why the manufacturer should be free to justify agreements intended to destroy competition among dealers by showing the indirect benefits to himself, when the dealers could not justify the same agreements by showing benefits to themselves (220 U.S. at 407-409):

The bill asserts the importance of a standard retail price and alleges generally that confusion and damage have resulted from sales at less than the prices fixed. But the advantage of established retail prices primarily concerns the dealers. The enlarged profits which would result from adherence to the established rates would go to them and not to the complainant. It is through the inability of the favored dealers to realize these profits, on account of the described competition, that the complainant

works out its alleged injury. If there be an advantage to a manufacturer in the maintenance of fixed retail prices, the question remains whether it is one which he is entitled to secure by agreements restricting the freedom of trade on the part of dealers who own what they sell. As to this, the complainant can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other. If the immediate advantage they would thus obtain would not be sufficient to sustain such a direct agreement, the asserted ulterior benefit to the complainant cannot be regarded as sufficient to support its system.

But agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void. They are not saved by the advantages which the participants expect to derive from the enhanced price to the consumer. * * *

The same reasoning is equally controlling here. Here, as there, "The [manufacturer] having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic" (220 U.S. at 409).

Over thirty years after the *Dr. Miles* case, this Court reaffirmed the principle in *United States v. Bausch & Lomb Co.*, 321 U.S. 707, a case which closely parallels the present case. *Bausch & Lomb* involved the validity, under Sections 1 and 3 of the

Sherman Act, of the distribution system of Soft-Lite eyeglass lenses. Soft-Lite sold its lenses to wholesalers who, in turn, sold them to retailers. "Soft-Lite's wholesalers were allowed to resell only to retailers who held licenses from Soft-Lite" (321 U.S. at 714). "Soft-Lite indicated to the wholesalers the prices to be received by them from retailers by means of published price lists," and each retailer was "required to maintain prevailing local price schedules" (321 U.S. at 715).

The district court held that Soft-Lite had contracted and conspired with wholesalers and retailers to violate the Sherman Act (321 U.S. at 717):

* * * (b) by entering into so-called "license" agreements with optical retailers which provide that said retailers will sell such lenses only to the public; (c) by entering into agreements with wholesale customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc. * * *

In affirming the holding that such agreements were illegal, this Court stated (321 U.S. at 721, emphasis added):

Soft-Lite is the distributor of an unpatented article. It sells to its wholesalers at prices satisfactory to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or *the persons to whom its purchaser may resell*, except as the seller moves

along the route which is marked by the Miller-Tydings Act. * * * Even the additional protection of a copyright * * * or of a patent * * *, adds nothing to a distributor's power to control prices of resale by a purchaser. *The same thing is true as to restriction of customers.* * * *

The Court further pointed out (321 U.S. at 723, emphasis added):

So far as the wholesalers are concerned, Soft-Lite and its officers conspired and combined among themselves and with at least some of the wholesalers to restrain commerce by designating selected wholesalers as sub-distributors of Soft-Lite products, by fixing resale prices and *by limiting the customers of the wholesalers* to those recommended by the wholesalers and approved by Soft-Lite—all in violation of the Sherman Act. * * *

United States v. Bausch & Lomb plainly governs the present case. If the *Bausch & Lomb* case the distributor was required to limit his customers to persons approved by Bausch & Lomb whereas appellant defines the limitation by both a customer and a geographical restriction; but the distinction is irrelevant because the basic vice of both schemes is the same: each involves an unlawful attempt by a manufacturer to limit competition in the distribution of its product after it has sold it to others. *Bausch & Lomb* makes it clear that such an attempt is illegal whether its purpose is to "limit * * * the price at which or the persons to whom its purchaser may resell" * * * (321 U.S. at 721). It is immaterial whether the primary purpose

of controlling the customers to whom the products were resold is, as in *Bausch & Lomb*, to effectuate a price-fixing scheme or, as appears in the present case, to eliminate competition for customers.

White's territorial and customer allocations are also unlawful, under traditional concepts, as an attempt by a manufacturer to project its control over goods into the hands of the purchaser. The attempted retention of control after sale runs counter to a policy which has its roots in the common law, and to which the Sherman Act gives full expression.

The common law recognized in only one very limited area a right of the seller of property to restrain its subsequent use. Thus, in *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6, 1898), Judge Taft included in his now-classic list of the five restraints of trade valid at common law agreements "by the buyer of property not to use the same in competition with the business retained by the seller." But Judge Taft was not speaking of repetitive sales

"[C]ovenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere, by competition or otherwise with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant, or agent not to compete with his master or employer after the expiration of his time of service. * * * (*United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 281 (C.A. 6, 1898)).

of goods manufactured on order or sold from inventory in the regular course of business. That is apparent from Judge Taft's prior and more complete discussion of each of the permissible restraints, in the course of which he showed that restraints on the use of property sold, like several other valid restraints, were permitted as an incentive to the sale of the *assets necessary to engage in the seller's business*. Without such incentive a businessman could not be expected to sell property which could be used in competition with his business. Speaking of covenants by a buyer of property not to compete with the seller, Judge Taft explained (85 Fed. at 280-281):

Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. This was not reducing competition; but was only securing the seller against an increase of competition of his own creating. Such an exception was necessary to promote the free purchase and sale of property. * * *

Plainly, this exception to the common law prohibition of restraints of trade deals with the transfer of capital assets, not inventory. It was never intended to apply to routine sales of a manufacturer's stock in trade, a situation in which no property is sold "with which the buyer might set up a rival business" and no exception is "necessary to promote the free purchase

and sale of property."²⁴ The exception has always been limited by this Court to cases like *Oregon Steam Navigation Co. v. Winsor*, 20 Wall. 64, where a steamship which could be used to set up a rival business was sold by a steamship company. Justice Bradley's understanding of the scope of the common law rule is indicated by his illustration of a comparable, valid restraint (20 Wall. at 67-68):

* * * Suppose the case of two persons associated in business as partners, and engaged in a manufacture by which they supply the country with a certain article, but the process of manufacture is a secret; and they agree to separate, and one of the terms of their separation is, that one of the parties shall not sell the manufactured article in Massachusetts, where the other resides and carries on business; and that the latter shall not sell the article in New York, where his associate is to reside and carry on business. Can there be any doubt that such an agreement would be valid and binding? * * *

²⁴ The cases cited by Judge Taft at 83 Fed. 271, 282, as illustrative of the exception for covenants by purchasers of property, also demonstrate its inapplicability to the case at bar. Three of the cases, *American Steamboat Co. v. Holdeman Paper Co.*, 83 Fed. 619 (C.A. 6, 1897), *Hitchcock v. Anthony*, 83 Fed. 779 (C.A. 6, 1897) and *Hodge v. Sloan*, 107 N.Y. 244 (1887), involve the sale of single plots of real estate; the remaining two cases, *Oregon Steam Navigation Co. v. Winsor*, 20 Wall. 64, and *Dunlop v. Gregory*, 40 N.Y. 241 (1851) involve the sale of steamboats with a restriction excluding the vendee from the area within which the vendor operated remaining vessels.

The critical distinction between covenants incidental to the sale of a business or similar capital assets and restraints upon the distribution or use of articles manufactured and sold in the regular course of business is exemplified by the contrast between the *Oregon Steam Navigation* case and the line of decisions stemming from *Adams v. Burke*, 17 Wall. 453, and *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373. In *Adams v. Burke*, *supra*, a patentee had assigned all rights of making, using, and vending the patented article within a ten-mile radius of Boston to the defendant's vendor. The defendant, having purchased the article within the ten-mile radius, used it outside that area. The plaintiff, assignee of the original patentee, alleged infringement by this use. Although the statute specifically authorized the patentee to control the manufacture and use of the patented article, the Court denied the patentee control of the use of the patented article after its initial sale. With express recognition that the public interest was involved, the Court held that "when the patentee * * * sells a machine or instrument whose sole value is in its use, he receives the consideration for its use and he parts with the right to restrict that use." 17 Wall. 453, 456. *Keller v. Standard Folding Bed Co.*, 157 U.S. 659, applied the same rule to sales outside a limited territory.

Since the Sherman Act codified the public interest in unrestricted distribution of goods which underpinned *Adams v. Burke*, attempts by a manufacturer

to impose restrictions on resale by its vendees have been struck down, regardless of the justification offered. Thus, resale price maintenance agreements covering proprietary medicines (*Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373), patented products (*Boston Store v. American Graphophone Co.*, 246 U.S. 8) and copyrighted articles (*Bobbs-Merrill Co. v. Straus*, 210 U.S. 339) were invalidated as outside the statutory monopoly. And attempts to control a licensee's choice of customers have met a similar fate (*Ethyl Gasoline Corp. v. United States*, 309 U.S. 436).

In the *Ethyl Gasoline* case, the Court held illegal a patent licensing system which prohibited the refiners of gasoline containing the patented fluid from selling to anyone except a licensed wholesaler. The evidence disclosed that the licenses were granted or withheld on the basis of the wholesaler's "business ethics," which included his adherence to resale prices suggested by the refiner. Initially, the Court pointed out that "if appellant's comprehensive control of the market in the distribution of lead-treated gasoline, as disclosed by the record, had been acquired without aid of the patents, but wholly by the contracts with refiners and jobbers, such control would involve a violation of the Sherman Act," 309 U.S. 436, 455. The Court then turned to the defense based on the patents and, in language applicable as well to White's competitive restraints on its distributors and dealers, stated at 309 U.S. 436, 457-458:

* * * [A]ppellant has established the marketing of the patented fuel in vast amounts on a nationwide scale through the 11,000 jobbers

and at the same time, by the leverage of its licensing contracts resting on the fulcrum of its patents, it has built up a combination capable of use, and actually used, as a means of controlling jobbers' prices and suppressing competition among them * * *. Such contracts or combinations which are used to obstruct the free and natural flow in the channels of interstate commerce of trade even in a patented article, after it is sold by the patentee or his licensee, are a violation of the Sherman Act. * * *

Thus, not even a patent or other statutory monopoly is sufficient justification for a manufacturer's restricting the price at which or the persons to whom his vendees may sell the manufactured article. In the absence of a statutory monopoly the illegality of such restrictions is incontestable. Nothing is now before the Court but the naked assertion that White, having sold its new trucks and parts to independent businessmen, nevertheless retains power to eliminate competition in their resale. A similar contention was answered in *United States v. Bausch & Lomb Co.*, 321 U.S. 707, 721, in these few words:

Soft-Lite is the distributor of an unpatented article. It sells to its wholesalers at prices satisfactory to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. * * * *The same thing is true as to restriction of customers.* * * * [Emphasis added.]

In sum, White's territorial restrictions are outside the exceptions to the common law prohibition of restraints of trade and unlawful under the Sherman Act both (1) because the common law recognized no excep-

tion for restraints intended to eliminate competition among purchasers of a manufacturer's goods and (2) "because they do not involve the sale of property" with which the buyer might set up a rival business."

II. APPELLANT'S CONTRACTS ELIMINATING COMPETITION IN THE SALE OF WHITE AND AUTOCAR TRUCKS BY FORBIDDING DISTRIBUTORS TO SELL TO CERTAIN CLASSES OF CUSTOMERS ARE PER SE UNLAWFUL CONTRACTS IN RESTRAINT OF TRADE

Considerations almost identical to those invalidating the territorial restrictions establish the unlawfulness, *per se*, of White's other attempts to eliminate competition in trucks it has sold to distributors and dealers. We deal with these in summary fashion, referring the Court, for a fuller discussion, to Part I of this brief.

A. WHITE'S CONTRACTS FORBIDDING ITS INDEPENDENT DISTRIBUTORS AND DEALERS FROM SELLING TO CERTAIN NAMED ACCOUNTS, WHICH WERE RESERVED TO WHITE ITSELF, ARE ILLEGAL PER SE

In its contracts with its distributors and dealers White reserved certain customers for itself, and the distributors and dealers agreed not to sell to those customers. A typical clause from a contract with a distributor states (R. 425):

Distributor further agrees not to sell nor to authorize his dealers to sell such trucks to any Federal or State government or any department or political subdivision thereof, unless the right to do so is specifically granted by Company in writing.

Such agreements are illegal *per se* under the long-established rule prohibiting agreements among com-

petitors allocating customers and restraining competition for their patronage.

In *United States v. McKesson & Robbins*, 351 U.S. 305, this Court held that resale-price-maintenance agreements between a drug manufacturer (that sold both to independent wholesalers and to retailers) and the independent wholesalers (that sold to retailers) were illegal *per se* under the established law forbidding price-fixing agreements among competitors. The Miller-Tydings and McGuire Acts exempt from the Sherman Act resale price maintenance contracts authorized by State law, but the exemption does not apply to contracts "between persons, firms, or corporations in competition with each other." It was upon the latter ground that the Miller-Tydings and McGuire Act exemption was held inapplicable to McKesson & Robbins. Thus, the decision squarely holds that, where a manufacturer undertakes to sell its product both directly and through distributors or dealers, the manufacturer and its distributors or dealers are competitors on the same functional level, subject to all the Sherman Act prohibitions against agreements among competitors intended to restrain competition. The agreements between White and each distributor or dealer under which the latter agreed not to resell trucks it had purchased from White to certain named accounts which White had reserved for itself are, therefore, subject to the long-established, *per se* prohibition against agreements among competitors allocating customers and eliminating competition for their patronage.

Even if White's double role as manufacturer and distributor were considered to distinguish its agreements from horizontal divisions of customers or markets, these agreements would be illegal *per se* under the principles discussed above with respect to vertical divisions of markets. The agreements eliminate all competition among the parties for named customers and deprive these customers of the benefits of competitive terms in the purchase of White trucks. White's sole attempt to justify this elimination of competition—"the only sure way to make certain that something really important is done right, is to do it for oneself" (Appellant's Brief, p. 18)—is in flat disregard of a basic premise of the Sherman Act: that it is the customer who should decide whether he prefers a lower price or the benefits of certainty that the product and services purchased will be of high quality. White has available the familiar and legitimate alternative of convincing the largest purchasers of its trucks that its services are superior to those of its distributors. White's agreements, which are not ancillary to the sale of a significant portion of its business or of its manufacturing assets, would be illegal at common law as well as under the Sherman Act.

B. WHITE'S CONTRACTS FORBIDDING ITS INDEPENDENT DISTRIBUTORS AND DEALERS FROM SELLING TO ANY PERSON FOR RESALE WITHOUT WHITE'S CONSENT ARE ILLEGAL PER SE

In *United States v. Bausch & Lomb Co.*, 321 U.S. 707, this Court held that the Sherman Act prohibits a manufacturer from requiring its distributors to agree not to sell to any customer for resale without

the consent of the manufacturer. This issue is, therefore, no longer open.

We have reviewed the facts and decision in *Bausch & Lomb* at some length above, *supra*, pp. 36-38. Here it is sufficient to emphasize that in the district court Judge Rifkind had held that Soft-Lite had violated the Sherman Act "by entering into agreements with wholesale customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as 'licensees' by the defendant Soft-Lite Lens Company, Inc." See 321 U.S. at 717. This Court affirmed, treating the separate elements of resale price maintenance and restriction of wholesalers' customers as equally violative of the Sherman Act and stating (321 U.S. 721):

Soft-Lite is the distributor of an unpatented article. It sells to wholesalers at prices satisfactory to itself. Beyond that point it may not project its power over the prices of its wholesale customers by agreement. A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchasers may resell * * *. The same thing is true as to restriction of customers.

There can be no doubt that the Court considered and decided the question of the validity of a manufac-

²⁸ Similarly, the Court stated (321 U.S. 723) that: "So far as the wholesalers are concerned, Soft-Lite and its officers conspired and combined among themselves and with at least some of the wholesalers to restrain commerce by designating selected wholesalers as sub-distributors of Soft-Lite products, by fixing resale prices and by limiting the customers of the wholesalers to those recommended by the wholesalers and approved by Soft-Lite—all in violation of the Sherman Act."

turer's requirement of its prior approval of any customer buying its product from an independent distributor for purposes of resale. The Court's decision that such agreements are unlawful under the Sherman Act conclusively disposes of White's contention that its indistinguishable agreements are lawful.

Even if the issue were an open one, it would be clear that agreements requiring the manufacturer's approval of any sale for resale are illegal *per se*. The anticompetitive effects of such agreements are twofold. First, like an agreement to boycott, it restricts by contract the freedom of independent distributors to determine whether to deal with a particular customer, subjecting that customer to the combined economic force of a group controlled by the manufacturer. Second, it deprives the ultimate consumer of the opportunity to deal with any retailer whose methods of selling and competing are disapproved by the manufacturer.

These anticompetitive effects could not be justified in the case of an agreement among the distributors, although their interest in the good reputation of White trucks is as great as is White's; the reasonableness of an agreement not to sell to a particular class of customers is no more open a question when presented by White. Moreover, White's attempt to justify these restrictions as necessary for the preservation of the reputation and good will of its product is no different from that rejected in the *Dr. Miles* case. The answer is the same here: it is for the ultimate consumer and not for White Motor to decide whether a price-cutting retailer or one providing

higher-quality sales and services is preferable. Finally, White's purpose of protecting its product's reputation from injuries done to it by unauthorized, inferior dealers can be substantially effectuated by such legitimate means as informing the public of the advantages of dealing with the distributors or retailers it chooses and officially recommends.

CONCLUSION

The judgment of the court below should be affirmed.

Respectfully submitted,

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DECEMBER 1962.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 54

THE WHITE MOTOR COMPANY, *Appellant*,

v.

UNITED STATES, *Appellee*.

On Appeal From the United States District Court for the
Northern District of Ohio

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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December 21, 1962

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

*To the Honorable, the Chief Justice of the United
States and the Associate Justices of the Supreme
Court of the United States:*

Now come Honorbilt Products, Inc. of Philadelphia, Pa., and August Bedding Company of Augusta, Georgia, both of which are small, regionally-based mattress manufacturers, on behalf of themselves and thirty-four other similar small manufacturers

located throughout the United States, and Serta Associates, Inc., and respectfully move this Court, pursuant to Rule 42.3 of the Rules of this Court, for leave to file the accompanying brief in this case *amicus curiae*. Said manufacturers, in order to maintain their independence and wage effective competition with two nation-wide manufacturers that dominate the mattress industry, have for many years been using the common trademark, "Serta". This mark is owned and licensed to them by movant, Serta Associates, Inc., which is wholly owned by its licensees. The interest of movants and their reasons for asking leave to file a brief *amicus curiae* are set forth below.

The need for movants' joint use of a common mark arises from their individual financial inability, being small businesses, to defray the cost of the expensive national magazine, television and radio advertising and promotion that must be undertaken if they are to compete successfully, and the consequent necessity to pool their limited financial resources. As an essential element of their cooperative advertising program, each licensee is granted the right to sell mattresses bearing the common trademark exclusively within a specified area. This allocation of territory is essential to movants' competitive survival. Most of the licensees have been doing business in their respective areas for thirty years or more.

The antitrust validity of such exclusive territorial allocations has been upheld by the Court of Appeals for the Fifth Circuit, in a recent case involving another cooperative trademark licensing group in the mattress industry, *Denison Mattress Factory v. The Spring-Air Company*, 308 F. 2d 403. The Department of Justice, however, is currently urging, in a civil anti-

trust proceeding against Serta Associates, Inc. in the District Court in Chicago, that, no matter how small the percentage of the industry involved, the mere existence of territorial allocations with respect to a single trademarked brand of mattress is illegal *per se*, and that Serta Associates, Inc. is foreclosed from presenting evidence showing that the allocations promote competition, are necessary to curb monopoly in the industry and are reasonably ancillary to a valid trademark license.

The territorial allocation involved in this appeal is described by the government as a vertical one, imposed by the manufacturer on its distributors, while the allocation involved in the Chicago proceeding against movant is described by the government as horizontal in nature. The government, however, in its argument in this appeal that vertical allocations are *per se* illegal, is taking the position that all territorial allocations, horizontal or vertical, are illegal, and is citing (without analyzing) precedents involving horizontal allocations. Appellant, which is understandably concerned only with supporting its vertical allocations, is apparently conceding, without analysis of the problem, the illegality of *all* horizontal territorial allocation agreements. Movants, therefore, are satisfied that neither party to the appeal will present the facts or raise the legal questions relevant to the antitrust validity of horizontal territorial allocations, and that the Court's opinion in this appeal may affect the District Court's disposition of the Chicago proceeding against movant.

The purpose of the accompanying brief is, therefore, to aid the Court in the disposition of this appeal:—

- (a) By analyzing the relevant legal precedents dealing with horizontal territorial allocations; and

- (b) By presenting to the Court the basic facts pertaining to the movants, so that the Court's opinion on this appeal will not inadvertently apply to facts which differ from those in the record presently before it.

The delay in filing this motion is due to the fact that the Justice Department's position with respect to horizontal territorial allocations was not clear to movants until their receipt of a copy of the Department's brief, which took place on December 14, 1962.

Respectfully submitted,

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5

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**BRIEF AMICUS CURIAE OF SERTA ASSOCIATES, INC.,
HONORBILT PRODUCTS, INC., AUGUSTA BEDDING
COMPANY AND THIRTY-FOUR OTHER LICENSEES
OF SERTA ASSOCIATES, INC.**

This brief *amicus* is presented on behalf of Serta Associates, Inc. and its licensees, some thirty-six small, regionally-based United States mattress manufacturers, which sell their products primarily to department and household furnishing stores and not directly to retail consumers. The thirty-six licensees manufacture mattresses under the common trademark, "Serta", which is licensed to them by Serta Associates,

Inc., all the shares in which are owned by said licensees. A condition of the Serta license is the designation of an exclusive territory outside of which a licensee may not sell its Serta-identified products. The licensees also produce mattresses under their own private trademarks, which are not subject to any contractual restrictions and are not involved in this brief. The number of mattresses that a given licensee manufactures and sells, either under its own private trademark or under the Serta trademark, is left to the licensee's sole discretion.

The purpose of this brief is to demonstrate that a territorial allocation of this kind, based on trademark licenses involving manufacturers with no market power, is not invalid under the Sherman Act.

STATEMENT OF FACTS

The aggregate annual sales volume of Serta-brand mattresses produced by all thirty-six Serta licensees in 1961 was approximately 27 million dollars, which is less than 7 percent of the total annual wholesale sales of the bedding industry of the United States, estimated to be nearly five hundred million dollars a year. The main competitor of the Serta licensees is the Simmons Company, a nation-wide firm with 13 factories, 61 warehouses and a total annual sales volume of one hundred and ten million dollars. Detailed figures are not available as to the annual sales volume of the second largest nationally integrated competitor, the Englander Company, but this is also considerably in excess of the aggregate amount of Serta-brand sales.

The Serta licensees located in Philadelphia, Pa. and Augusta, Ga. have about twenty-five local manufacturing competitors each, and the situation of the other

licensees is essentially the same. Because of this intense local competition, the selling prices of the individual Serta licensees vary considerably, and they have neither the occasion nor the power to fix the price of their products.

The basic trademark licensing agreements described herein were first signed in 1931 as a means of enabling the participating regional licensees to remain in business and compete with the Simmons Company. This corporation had complete national coverage both in manufacturing and warehousing and was able to engage in expensive national advertising. Such advertising coverage was a competitive necessity for the licensees but was not within the financial resources of the individual small manufacturers. As an alternative means of coping with this problem, a group of manufacturers (which subsequently became the Serta licensees) had, for three years prior to 1931, prepared and discussed plans for a merger. These plans were abandoned, because of the desire of these manufacturers to retain control over their own manufacturing and distributing operations and to maintain their local personalities.

Under the trademark licenses, the licensor, Serta Associates, Inc. (a) engages in research, (b) develops specifications and quality standards for Serta mattresses, (c) subjects the Serta-brand mattresses to quality control and inspection procedures necessary to the validity of the licenses and the preservation of the trademark and (d) develops and engages in national advertising campaigns, both in national magazines and on radio and TV, and other promotional programs. The Serta licensees contribute funds to Serta Associates, Inc. to support these activities, and also

use their own funds for local advertising of Serta-brand mattresses. Even more than it was in 1931, it is now essential for competitive survival for the Serta licensees to exploit a common trademark by using expensive mass communications media, which they could not afford to do individually. For the same reason, since the initiation of the Serta trademark licensing program, five other similar trademark licensing groups have been formed in the mattress industry.

Most of Serta licensees have been in business in their respective areas for decades and some for three generations. During that period, they have generated considerable good will with their retail outlets. The purpose of the Serta licensees in making financial contributions for the promotion of the Serta trademark, both locally and nationally through Serta Associates, Inc., was to build further on this good will, by reaching retail consumers in their areas who can only be reached through national advertising of a well known brand name. To avoid having this good will dissipated and to assure to the licensees that they will obtain the fruits of their financial investment in developing the common mark, the trademark license from Serta Associates, Inc. to each individual licensee grants exclusive rights in the defined geographic area that had theretofore been effectively served by the licensee. If the licensees were not thus assured of an exclusive territory, they would have no incentive for cooperating in the advertising and promotion of a common trademark. Without such cooperation, the economic consequences to the individual licensees would be sale, merger, or gradual loss, of business and subsequent liquidation.

The validity under the Sherman Act of territorial allocations as described above has been upheld by the Court of Appeals for the Fifth Circuit in a recent case involving a similar cooperative licensing group in the mattress industry, *Denison Mattress Factory v. The Spring-Air Company*, 308 F. 2d 403. The validity of this kind of territorial allocation has been attacked, however, by the Justice Department in a civil antitrust proceeding in the District Court in Chicago, Illinois, brought against Serta Associates, Inc. The government's complaint alleges that the Serta licensees have combined to fix the *resale* prices of their customers (an allegation denied by the defendant) but, as on this appeal, the government argues that the territorial allocation is *per se* and independently illegal. The government's complaint does not allege that the Serta licensees have conspired to fix their own selling prices, which, as pointed out earlier, they do not have the market power to do (see pp. 6-7, *supra*).

Amici's arrangements, as viewed by the Justice Department, are in the nature of horizontal territorial allocations. Although the record on this appeal involves vertical territorial allocations, the Justice Department is relying on precedents involving horizontal allocations and taking the position that all such allocations are invalid. Appellant, concerned only with its vertical allocation arrangements, is conceding, without analysis, the invalidity of all horizontal allocations. *Amici* are therefore apprehensive that this Court, on a record not involving horizontal territorial allocations, may in its opinion give some indication that all horizontal territorial allocations are invalid, and thereby negative the contrary view of the Fifth Circuit and prejudice *amici* in the Chicago antitrust proceeding described in the preceding paragraph.

ARGUMENT

An Exclusive Territorial Allocation Agreement Among Potential Competitors Which Promotes Competition or is Ancillary to a Lawful Main Purpose Does Not Violate the Sherman Act

The basic substantive position of the Department of Justice is that any territorial allocation agreement involving potential competitors, even if it covers only a small percentage of the relevant market, is *per se* illegal and admits of no substantive defenses. The procedural corollary of this position is that a defendant is foreclosed from introducing evidence to prove that the territorial allocation promotes, rather than restrains, competition in the market place, or that the allocation is reasonably ancillary to a lawful main purpose. In practical effect, the Department contends that, once the mere existence of any territorial allocation is established by contract, the plaintiff is automatically entitled to a summary judgment against the parties to the contract.

The Department further contends that its position is supported by the opinion of this Court in *Northern Pacific Co. v. United States*, 356 U.S. 1. We do not agree. Thus, we agree that:—"There are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pacific Co. v. United States*, at p. 5. We also agree that, *once* the restrictive effect of such an agreement on competition is established, there is no "necessity for any incredibly complicated and prolonged economic investigation into the entire his-

tory of the industry involved, as well as related industries, in an effort to determine at large whether the particular restraint is unreasonable" (*ibid*). But to go further, as the Department contends, and to foreclose a defendant from producing evidence that a territorial allocation does not restrain competition in the relevant market but is, in fact, necessary to counteract monopolistic tendencies in the industry, is to convert a rule of judicial administrative convenience into an instrument for promoting monopoly contrary to the policy of the Sherman Act. This contention finds no support in the relevant precedents.—

The Department's position would involve reading into the antitrust laws economic theories favoring, rather than discouraging, monopoly, cf. the separate opinion of Mr. Justice Douglas in *Standard Oil Co. v. United States*, 337 U.S. 293, 315. It is at odds with the legislative purpose of the Sherman Act, which was

"* * * directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury." *Aper Hosiery Co. v. Leader*, 310 U.S. 469, 493. (Italics supplied).

The starting point for analysis, and the sole precedent on division of markets cited in the *Northern Pacific* case, is *United States v. Addyston Pipe and*

Steel Co., 85 Fed. 271 (C.C.A. 6), aff'd 175 U.S. 211. The defendants in this case were a combination producing two-thirds of the output of cast-iron pipe in an area covering three-fourths of the United States. By virtue of their market control, their collusive rotation of bids and the freight that had to be paid by competing Eastern manufacturers, the defendants

"were practically able to fix prices [and] to compel the public to pay an increase over what the price would have been, if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over Eastern competitors." (85 Fed., at 292).

Such a practical elimination of price competition within substantial parts of the United States was the determinative factor in the court's conclusion that the Sherman Act had been violated. See *Addyston Pipe and Steel Co. v. United States*, 175 U.S., at 236; *Aper Hosiery Co. v. Leader*, 310 U.S., at 495, fn. 16. This is a far cry from our situation, where the manufacturer of a Serta-brand mattress in Philadelphia or Augusta, Ga., has twenty-five competitors in its own area, and is not able to fix prices but has its own prices determined by the interplay of competitive forces.

The Court in *Addyston Pipe and Steel* stated that the public policy of the common law and of the Sherman Act prohibiting restraints of trade was based on two primary considerations, which it then showed at length to be basic to the cases holding restraints of trade invalid:—

"4. They [restraints of trade] prevent competition and enhance prices. 5. They expose the public to all the evils of monopoly; and this especially is applicable to wealthy companies and large cor-

porations, who have the means, unless restrained by law, to exclude rivalry, monopolize business, and engross the market. Against evils like these, wise laws protect individuals and the public by declaring all such contracts void." (85 Fed., at p. 280, quoting with approval *Alger v. Thacher*, 19 Pick. 51, 54).

The territorial allocations described in our Statement of Facts, which involve small businesses, promote competition both nationally and in local markets, have no effect on prices and protect the public from monopolistic tendencies that would otherwise encompass their industry, are not proscribed by this public policy.

The defendants in the *Addyston* case did not deny that the purpose of their agreements was to fix prices and to restrain competition, but pleaded the reasonableness of the prices fixed by them and the necessity of combining in order to avoid ruinous competition. The Court (which did not agree with this justification of defendants) held independently:

"* * * that the association of the defendants, however reasonable the prices they fixed, however great the competition they had to encounter and however great the necessity for curbing themselves by joint agreement from committing financial suicide by ill-advised competition, was void at common law, because in restraint of trade, and tending to a monopoly." (Ibid, p. 291).

Nowhere, however, is there any suggestion that anti-trust defendants are foreclosed from pleading (and proving (as is true of the *amici* herein) that they had no power to fix prices; that they were not eliminating outside competition; and that their actions tended not towards monopoly but towards its prevention.

The Court in *Addyston Pipe and Steel* clearly opposed the view

“* * * that contracts made with a view to check such ruinous competition and regulate prices, though in restraint of trade, *and having no other purpose*, will be upheld.” (Ibid, p. 283; italics supplied).

It said that the cases

“* * * do not manifest any general disposition on the part of the courts to be more liberal in supporting contracts *having for their sole object the restraint of trade* than did the courts of an earlier time.” (Ibid, p. 283; italics supplied).

It was in this context that the Court laid down, in no uncertain terms, the doctrine of reasonable ancillary restraints, i.e., that a trade restraint is enforceable, if

“* * * the covenant embodying it is merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party.” (Ibid, p. 282).

The territorial allocations obtaining among the Sertal licensees are ancillary to their lawful (and economically necessary) “main purpose” to contract for the co-operative promotion of their trademarks and their national advertising, and are needed to protect the participating licensee “in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use by the other party.”

To rephrase the doctrine of the *Addyston* case in the language employed by this Court in *Northern Pacific Co. v. United States* (see pp. 10-11, above):—

Once the plaintiff has established the "pernicious effect" of a territorial allocation agreement on competition in the relevant market, and the defendants have failed to establish, as a "redeeming virtue" of such an agreement, that it was ancillary to a lawful main purpose, the allocations "are conclusively presumed to be unreasonable and therefore illegal without inquiry as to the precise harm they have caused or the business excuse for their use." But the *per se* rule of antitrust illegality does not deprive defendants of the right to introduce evidence that the allocations do not restrict competition in the relevant market and are incidental to a lawful and competitively-oriented contract.

The above interpretation is consistent with the *Aper Hosiery* case where, in two exhaustive footnotes dealing with the legislative history and the judicial application of the Sherman Act, this Court concluded that the Act was designed to deal with restraints of trade which had a "significant" or "substantial" effect on "business competition," and that the emphasis of the cases was on "competitive conditions in the industry," 310 U.S. at pp. 493 to 496, footnotes 15, 16. The general rule set forth in the preceding paragraph applies to territorial allocations, price-fixing and the other categories of *per se* violation referred to in the *Northern Pacific* dictum. It does not exclude the possibility that a practice such as price-fixing may have such an inherently adverse or pernicious effect on competition as to reduce to the vanishing point the possibility that it might have any "redeeming virtue" or competitive justification. However, the legal precedents discussed in this brief, and the Statement of Facts herein, demonstrate the divergent impacts of territorial allocation and of price-fixing on competition, and the economic

and logical fallacy of regarding the cases in the one area as dispositive of the cases in the other. We urge that a practice such as territorial allocation, which in certain cases is essential to the survival of a competitive industry, be adjudged on its own merits, and not by way of presumed analogy to price-fixing agreements, which play a different role in the economy and for which it may well be impossible to advance any competitive defense.

Other territorial allocation cases that have been reviewed by this Court confirm the above views. Thus, *United States v. National Lead Co.*, 63 F. Supp. 513 (S.D. N.Y.), aff'd, 332 U.S. 319, involved dominant producers covering the entire titanium pigments industry, who agreed to divide world markets on a mutually exclusive basis. As the District Court said:—

“When the story is seen as a whole, there is no blinking the fact that there is no free commerce in titanium. Every pound of it is trammelled by privately imposed regulation.” (63 F. Supp. at 520).

Specifically analyzing the agreements and evidence presented to it, the court repeatedly found that the paramount purpose of the agreements and the combination of the parties was to suppress and avoid competition, and rejected defendants' arguments that the restraints in question were reasonably ancillary to a lawful main purpose (*ibid*, pp. 518-9, 522-4). Having made these basic findings, the court summarily disposed of defendants' arguments of reasonableness and business necessity, i.e., that the restrictive arrangements had benefited the public and that American producers could not compete in a cartelized world except on cartelized terms (*ibid*, pp. 525-6).

Similarly, in *United States v. Timken Roller Bearing Co.*, 83 F. Supp. 284 (N.D. Ohio), aff'd, 341 U.S. 593, the defendant, which had entered into territorially exclusive agreements with the largest English and French producers of tapered roller bearings, was

“* * * an American corporation, dominant in the field of tapered roller bearings, producing between 70 and 80 percent of the American output. In 1947 it did over \$77,000,000 gross sales.” (Concurring opinion of Mr. Justice Reed, 341 U.S. at 603; see also 83 F. Supp. 288-9, 291-2).

This Court endorsed the District Court's finding, based on an exhaustive review of the evidence, that the purpose and effect of defendant's restrictive agreements “* * * was to avoid all competition either among themselves or with others” (*ibid.*, at pp. 597-8; see also 83 F. Supp. at 306-7). Both the District Court and this Court rejected, but the District Court considered at length, the evidence supporting defendant's arguments that “* * * the trade restraints were merely incidental to an otherwise legitimate ‘joint venture’” and were “* * * reasonable steps taken to implement a valid trademark licensing system” (*ibid.*; see also 83 F. Supp. at 310-6, 316). Having done this, both courts rejected arguments that what the defendant had done was reasonable in the light of foreign trade conditions (*ibid.*, 599; see also 83 F. Supp. at 316-8).

Neither *National Lead* nor *Timken* contains any indication that the plaintiff in a territorial allocation case is relieved from establishing the adverse impact of the allocation on competition in the market place, or that a defendant may not try to prove the negative of that proposition or the existence of a valid main purpose to which the allocation was incidental. If

such antitrust safeguards exist when the defendants dominate their respective industries, they apply with even increased force to small businesses, possessing no market power, whose reservation of exclusive areas is an integral part of a legitimate main purpose and program to compete with and curb the rise of monopoly in their industry.

CONCLUSION

The Court's disposition of the pending appeal does not require a determination that all horizontal territorial allocations are invalid.

Respectfully submitted,

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MOTION FILED DEC 29 1962

IN THE
Supreme Court of the United States
OCTOBER TERM, 1962

No. 54

THE WHITE MOTOR COMPANY, *Appellant*,

v.

UNITED STATES, *Appellee*.

On Appeal from the United States District Court for the
Northern District of Ohio

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE
and
BRIEF AMICUS CURIAE OF THE
SANDURA COMPANY**

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On Appeal from the United States District Court for the
Northern District of Ohio

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

Sandura Company hereby moves, pursuant to Rule 42.3 of the Rules of this Court, for leave to file a short brief *amicus curiae* in this case. Sandura Company's interest arises from the fact that it is a party in another proceeding presently pending in the Court of Appeals for the Sixth Circuit presenting the same legal issue, that is, whether the use of exclusive territories as a

method of distributing a manufacturer's products is illegal under the antitrust laws. *Sandura Company v. Federal Trade Commission*, No. 15,221 (petition filed December 5, 1962).

In its brief filed in the *White* case, the Government urges this Court to adopt a rule of law that all agreements between a manufacturer and dealers of its products which assign dealers exclusive geographical areas are illegal *per se* under the Sherman Act. Obviously such an unlimited legal principle would outlaw the use of exclusive territories by the Sandura Company with its distributors even though their use were demonstrably reasonable and beneficial to competition.

The *Sandura* case in the Sixth Circuit involves a different industry, hard surface floor covering. The structure and distribution patterns of this industry are radically different from those of the automobile and truck industries. The hard surface floor covering industry is dominated by three or four companies. Sandura Company is a very small firm in this industry. The reasons for Sandura Company's adoption of exclusive territories with its distributors and the effects of their use upon industry competition are substantially different from those disclosed in the *White* case. For these reasons Sandura Company urges this Court not to dispose of the *White* case in a fashion that would either prejudice the case in the Sixth Circuit or preclude a consideration by this Court or any other tribunal of the nature, purpose and effect upon competition of the use of exclusive territories by the Sandura Company.

Sandura Company received the final order of the Federal Trade Commission *In the Matter of Sandura*

Company, Docket No. 7042, on October 8, 1962. The delay in filing this motion is due to the fact that the Sandura Company did not file its petition for review to set aside the order of the Commission with the Court of Appeals for the Sixth Circuit until December 5, 1962, which date was after the appellant. The White Motor Company, filed its brief in this case on October 29, 1962. Last week Sandura Company sought, but was not granted, consent of the parties to file an *amicus curiae* brief in this case.

For these reasons we respectfully request that this motion be granted.

Respectfully submitted,

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**BRIEF AMICUS CURIAE OF THE
SANDURA COMPANY**

THE POSITION OF SANDURA COMPANY

This brief is presented on behalf of Sandura Company (Sandura) which is engaged in the manufacture and sale of vinyl plastic floor covering products.

On January 15, 1958, the Federal Trade Commission issued a complaint against Sandura charging a violation of Section 5 of the Federal Trade Commission Act

(15 U.S.C. § 45).¹ The complaint alleged two violations of Section 5: the use of exclusive territories for distribution and the enforcement of a system of resale price maintenance.

After the conclusion of administrative proceedings, the Federal Trade Commission issued an opinion and final order against Sandura for the alleged violations of Section 5. The final order prohibited Sandura, *inter alia*, from putting into effect any merchandising or distribution plan or policy under which contracts are entered into with dealers or distributors of its products which have the purpose or effect of "restricting the geographical area in which, or the persons or classes of persons to whom, any dealer or distributor may sell such products." In the petition for review filed with the Court of Appeals for the Sixth Circuit, Sandura maintains that this part of the final order is contrary to law and is not supported by the record evidence.

The evidence in that proceeding, we believe, demonstrates conclusively that the use of exclusive territories by Sandura was reasonable and essential for its business survival. The pertinent facts may be succinctly stated as follows:

The hard surface floor covering industry is dominated by three giant firms: Armstrong Cork, Congoleum-Nairn and Pabco, now the Pabco Division of Fiberboard Paper Products Company. These three

¹ Section 5 in pertinent part provides: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." (15 U.S.C. § 45) This proscription includes violations of the Sherman Act. See *F.T.C. v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 (1953).

companies control between 77 per cent and 84 per cent of the total industry assets. Another group of competitors consists of large diversified companies such as Johns Manville, Goodyear and Goodrich, which make various types of floor covering in addition to other well-known products. There is a third group of manufacturers made up of relatively small companies, of which Sandura is one.

Sandura has never had more than 1.5 per cent of the total industry assets. It ranks near the bottom of the industry.

In the late 1940's, Sandura, in an effort to compete with the dominant firms, introduced a new type of vinyl plastic floor covering (called "roto-vinyl") under the tradename SANDRAN. Initially Sandura encountered product difficulties, which caused sales to drop sharply from \$7 million in 1950 to \$3.5 million in 1954. As a result its distributors and dealers either dropped the SANDRAN line or gave up any serious effort to promote it. By 1954 Sandura was insolvent.

Determined to stay in the market, Sandura in 1954 made an all-out attempt to halt the downward sales trend. By late 1954 it had substantially corrected the product difficulties. However, even with the product improvement, Sandura had a critical problem of keeping old distributors and obtaining new ones to handle its SANDRAN line. Insolvent and fighting for competitive survival, Sandura was forced to devise and offer distributors a plan which provided an incentive for them to take on the task of promoting the SANDRAN line and of doing an extensive job of promoting it.

In essence there were two aspects to the distributor problem. Sandura first had to convince distributors

to take on its new product, already tainted by failure, and then it had to get them to pay for the bulk of advertising and other promotional expenses. Traditionally distributors relied upon manufacturers to pay for promotion. The established distributors would not accept the SANDRAN product on these terms, so Sandura had no alternative but to go out and recruit new ones, without prior industry experience. But these prospective distributors would not make the necessary heavy capital investment without some assurance that resulting sales would accrue to them. So in late 1955 Sandura adopted a system of exclusive territorial distributorships.

Under this method of distribution Sandura set up defined geographical areas for its distributors and agreed not to sell to anyone else within the designated areas. The distributors in turn agreed to resell only within the defined areas and to undertake almost complete responsibility for advertising and promoting the SANDRAN line within the geographical areas.

Under this revised distribution plan, Sandura was able to maintain a few of its old distributors and to obtain new distributors. With increased sales promotion by its distributors, the SANDRAN product caught on and sales increased rapidly between 1954 and 1959. But the advantages of Sandura's product innovation proved short-lived. It only had to await the massive assault from the firms that dominate the industry: Armstrong Cork, Congoleum-Nairn and others almost immediately came into the market with matching products. Backed by unlimited resources for advertising and promotion, the sales of these companies soared while those of Sandura fell precipitously. From \$24 million in 1959, Sandura sales dropped

drastically to \$13.7 million in 1961. While such a decline for a two-year period was truly alarming, the situation was even worse with regard to income. Sandura made \$1,027,000 in 1959; in 1961, its net income was \$352,000.

This decline was not a temporary development. The last data presented to the Commission showed that for the first five months of 1962 Sandura sales were off another 25 per cent from the corresponding period in 1961. As for income, there was none. For the first five months of 1962, Sandura operated at a net loss, whereas in 1961 it had operated at a net profit.

On the other hand, the industry leaders were forging ahead. Armstrong, for example, increased its sales in 1961 by 4 per cent, an increase, considering its size, that probably represented more than Sandura's total loss of sales. Armstrong's income, too, went up 12 per cent for 1961. The upward movement continued in 1962. For the first quarter of that year, Armstrong sales advanced 5 per cent; its income moved up by 14 per cent.

As these facts demonstrate, Sandura is engaged in another competitive struggle for its very existence. Even with territorial distributorships it is fighting a desperate competitive battle against industrial giants. If anything, such distributorships are needed more now than ever if Sandura is to remain in the market and hold onto its existing distributors. In other words, a flat prohibition against the use of territorial limitations would almost surely bring about the demise of Sandura or at least further seriously weaken it as a competitive factor in this industry. In any event, the net result of any such prohibition would be to impair

rather than to enhance competition in one of the most highly concentrated industries in this country.

Essentially Sandura's position is that exclusive territories must be judged by the standard of reasonableness. In the instant *White* case, however, the Government takes a position that would preclude such an inquiry. In its brief, the Government advocates the application of a *per se* rule of illegality as to all vertical agreements in which a manufacturer limits the territories in which, and the customers to whom, its distributors and dealers may resell its products. For its argument it relies mainly on the analogy that horizontal agreements between competitors to divide territories are illegal *per se* (See Govt. Br., pp. 12-17). Without discussing the flaws of that analogy we point out here only that the analogy is no answer to what is disclosed by the Sandura proceeding: that in the hard floor covering industry at least, there exists a set of business circumstances that justify the use of territorial distributorships as a method of waging competition. Before the Sixth Circuit Sandura will show that its use of such territorial limitations was essential for its business survival and that conditions still exist in the industry which require the continued use of this method of distribution. As stated in the dissenting opinion of the Commission, "not only is it recognized and undisputed that [Sandura] is a relatively small short-line manufacturer of hard-surface floor coverings faced with full line competition from giants around it, but also that it vitally needed to utilize the device of territorially restrictive exclusive dealerships to help it overcome what appeared to be insurmountable problems." (*Sandura Company*, F.T.C. Docket No. 7042, dissenting opinion, p. 2)

The dissent was against the application of any *a priori* rule or absolute principle of *per se* illegality, and urged that the Commission "take a broad perspective and weigh the public interest in the survival" of Sandura. (*Id.*) "The Commission is with authority and power," the dissent added, "to take into view consideration and action of all aspects of a situation necessary for providing justice." After noting that Congress created the Commission expressly for this purpose, it is stated, "Even our courts in their consideration of problems somewhat similar to the one before us have taken into account and given more weight to the size of the respondents and their need for continuing the challenged acts and practices than it appears the majority did in this case". (*Id.* at 3)

Reference is made to exclusive dealing contracts which Congress has recognized as containing "inherent anticompetitive aspects" but has not made illegal *per se*. (*Id.* at 3-4) This Court, too, has stated time and again² that tie-in sales are "inherently anticompetitive", yet it acknowledges that even a "tying device" may be valid when "employed by a small company in an attempt to break into a market". (*Brown Shoe Company v. United States*, 370 U.S. 329-30 (1962))³ Surely Sandura should be permitted the same defense, particularly since, as noted in the Commission dissent (p. 2), "there is a substantial showing in the record that [Sandura] adopted its territorially restrictive exclusive dealerships as an emergency measure to get re-established after coming close to insolvency".

² See also *United States v. Loew's Inc.*, 31 Law Week 4001, 4004 (1962); *Northern Pacific Railway Company v. United States*, 356 U.S. 1, 6 (1958); *Black v. Magnolia Liquor Co.*, 355 U.S. 24, 25 (1957).

³ See also *United States v. Jerrold Electronics Corp.*, 187 F. Supp. 545 (E.D. Pa. 1960), *aff'd*, 365 U.S. 567 (1961).

We do not propose to argue here the relevant law that supports the use of the standard of reasonableness for determining the legality of exclusive territories under the antitrust laws. We are aware that this brief is being filed at a late stage of this proceeding, and we do not wish to make arguments which would require extensive responses by the parties. Our purpose, instead, is to draw to the attention of this Court the existence of the *Sandura* appeal in the Sixth Circuit. The *Sandura* case, we believe, forcefully demonstrates that business circumstances may exist which justify the use of exclusive territories for the strengthening rather than weakening of competition.

CONCLUSION

For these reasons, we respectfully request that this Court, in disposing of the *White* appeal, avoid adopting any broad proposition of law which would prejudice the *Sandura* appeal or which would preclude a later showing, either in this Court or elsewhere, that the use of exclusive territories is a lawful method of distribution when used for a reasonable business purpose with the effect of promoting competition.

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December 28, 1962

Office-Supreme Court, U.S.

FILED

JAN 4 1963

JOHN F. LEWIS, CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

THE WHITE MOTOR COMPANY, *Appellant*,

v.

UNITED STATES, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

REPLY BRIEF FOR APPELLANT

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IN THE
Supreme Court of the United States

October Term, 1962

No. 54

THE WHITE MOTOR COMPANY,

Appellant,

UNITED STATES,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

REPLY BRIEF FOR APPELLANT

Introduction

The Government has not met White's contentions. Rather, it has sought to avoid their force by advancing theoretical objections to White's sales arrangements and by arguing the obvious convenience that any *per se* rule gives the prosecutor.¹ Neither the business practicalities nor the force of the "rule of reason," as enunciated in *Standard Oil*,² can be thus pushed aside.

¹This argument should meet the same fate here that befell it in *Brown Shoe Co. v. United States*, 370 U. S. 294 (1962). Compare *Commissioner of Internal Revenue v. Duberstein*, 363 U. S. 278 (1960).

²*Standard Oil Co. of New Jersey v. United States*, 221 U. S. 1 (1911).

White is doing business in a very competitive market. It needs a strong dealer organization to battle larger competitors. The Government suggests that White should do business differently. Instead of insulating its dealers from each other's competition so that all of their competitive energies can be directed against competing manufacturers, it is suggested that White should only blunt the force of this competition by providing areas of primary responsibility for its dealers.³ This view is advanced without the Government's having any reason to believe that White's competition with other truck manufacturers would thereby be made greater or less as to price, safety, or service. The Government goes on to argue that other substitute means are available for limiting intrabrand competition among White dealers,⁴ and that these substitutes have been found adequate by industry, including the automobile industry. There is little basis for this sweeping generality. Moreover, the possibility that truck manufacturers, or White, might have

³See the Government's brief, pp. 25-26. This suggestion comes as something of a surprise in this Court, in view of the fact that White's efforts in the Court below to obtain permission to use this very primary-responsibility plan were opposed by the Government and defeated by the Court. See R. 95-96 (judgment proposed by Government) : R. 100, 104-5 (defendant objects, asks for permission to institute areas of primary responsibility) : R. 109 (Court below accepts Government's proposal). Indeed, ¶ VI.(A) of the decree, as proposed by the Government, R. 95-96, and entered by the Court, R. 109, could well be read as a prohibition of the primary-responsibility plan. It is not very charitable of the Government to rely in this Court on an alternative mode of distribution to which it successfully objected in the District Court. In any event, the Government's suggestion scarcely meets White's business problem. See pp. 15-16, *infra*.

⁴All in all, this line of argument appears to recognize that intrabrand competition must be regulated to merchandise effectively. Thus, the Government's brief tacitly supports the recommendations of the Department of Commerce and the Small Business Administration cited by White. (Brief for Appellant, pp. 14-17, 18-20). No effort is made to deny the relevance of these recommendations, or to suggest that small businessmen have ignored them.

special problems meriting factual investigation, is completely overlooked.

These factual arguments are a sign of weakness. The Government cannot rely on such "facts." Its case of necessity compels it to maintain that the facts are irrelevant.

Furthermore, the Government evades the real issues. What social purpose is served by forcing White to use different techniques to minimize competition among its dealers? What social purpose is served by insisting upon a rule that might well result in White's abandoning its entire system of independent dealers and conducting its business on a strictly territorial basis through its own employees? It is a disservice to the principles of the Sherman Act to suggest rules of conduct that cannot be supported in common sense, that are highly legalistic and conceptual in nature,⁵ that are written in no statute, and that run counter to long-established methods of doing business, without any supporting economic or business evidence.

The Government's position is a very broad one, with far-reaching consequences. While it lacks the courage to come out and say so, its brief is in reality an attack on the "rule of reason" as such. The arguments advanced are applicable to any restraint, whether it be an employee covenant not to compete, a requirements contract, or any one of numerous other restraints found in the daily business life of this country and traditionally lawful under "the rule of reason."⁶

⁵Even if the problem is viewed solely as an exercise in conceptual legalisms, the Government's position is without merit. See pp. 5-15, *infra*.

⁶Even tying contracts may be legal under extraordinary circumstances. *Loew's, Inc. v. United States*, ____ U. S. ____, 83 S. Ct. 97 (1962); *Brown Shoe Co. v. United States*, 370 U. S. 294, 329-30 (1962). The Government's argument comes perilously close to advocating a return to the medieval rule that *all* restraints of trade are unlawful. See, e.g., *Dyer's Case*, Y.B. 2 Henry V., fol. 5, pl. 26 (1415) (dictum).

This Court has no experience with the commercial and merchandising problems in the truck or other fields to support the far-reaching edict that the Government seeks. It is not an answer to say that the law demands such a rule; that argument is totally question-begging. The flexible and indefinite requirements of the Sherman Act do not provide a clear directive to justify setting aside White's dealer agreements on the ground that Congress in 1890 so decreed. The Act has been effective precisely because it was long ago construed to contain a "rule of reason." Its application is a matter to be determined gradually on a case-by-case basis and attuned to changing business patterns.⁷ The District Court erred in ignoring this wisdom and failing to accept the insistent teachings of the precedents. That error should not be compounded now by succumbing to suggestions that it is too inconvenient to test conceptual propositions against facts through the time-honored process of trial.

We now proceed to deal, first, in some detail with the principal legal arguments made by the Government, and, second, to inquire into a few of the facts claimed by the Government to demonstrate that White's agreements are pernicious and without redeeming virtue.

⁷Note that the injunction against White in this case is perpetual. Under the Government's theory, no changed circumstances could ever justify a modification of this equity decree.

I.

The Government's Argument—That All Agreements Between Competitors Restricting the Competition of the Parties in Territories or for Customers Are Illegal *Per Se*—Flies in the Face of the "Rule of Reason," Is Contrary to the Doctrine of Ancillary Restraints and Is Contradicted by the Cases.

The Government relies heavily on the line of cases holding that various agreements between competitors or potential competitors placing naked, non-ancillary restraints on competition with each other, particularly agreements to divide or allocate territories or customers, are illegal *per se*. The Government argues that those cases hold that *all* restraints of such nature, whether naked or merely ancillary, are unlawful *per se*. In short, illegality is to be determined by the kind of restraint, and all agreements between competitors or potential competitors restricting the place where or the persons with whom one or both of such competitors may compete are without more unlawful. (U. S. Brief, pp. 11-20).

This position is not supported by the decisions. Even cases cited by the Government conclusively demonstrate that the proposition is erroneous. Thus, in the *Oregon Steam Navigation Co.* case⁸ (decided under common law) this Court sustained an agreement between competitors restricting the territorial competition of one of them—the very type of restrictive contract that the Government so earnestly argues is *never* valid. And all of the kinds of restraints catalogued by Judge Taft in the *Addyston Pipe* case⁹ as valid if reasonable also directly prevent competition between actual or potential competitors.

⁸*Oregon Steam Nav. Co. v. Winsor*, 20 Wall. 64 (1874).

⁹*United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *modified in other respects* 175 U. S. 211 (1899).

To such cases may be added other relevant decisions by this Court under both common law and the Sherman Act. For example: In *Cincinnati, P., B. S. & P. Packet Co. v. Bay*, 200 U. S. 179 (1906), this Court sustained under the Sherman Act an agreement between competing shipping lines under which, in connection with the transfer of a number of vessels, the vendee imposed territorial restrictions on the conduct of the vendor's shipping business. In *Fowle v. Park*, 131 U. S. 88 (1889), this Court enforced, under common law, an agreement, made in connection with a transfer of certain rights to a trade secret, restricting territorial competition between competitors in the sale of a product made under the trade secret. In *Board of Trade of the City of Chicago v. Christie Grain and Stock Co.*, 198 U. S. 236 (1905), this Court enforced, under both common law and the Sherman Act, contracts under which the Board of Trade furnished telegraph companies with its quotations and limited the telegraph companies as to the persons to whom the telegraph companies could distribute them. In *Associated Press v. United States*, 326 U. S. 1 (1945), this Court sanctioned, under the Sherman Act, restraints limiting the right of certain newspapers to sell or dispose of to others, not only the news supplied to them by the Association, but also the news gathered by the newspapers themselves.

Finally, there is the wealth of federal, state and English authorities—some are cited at pages 22-28, 34-39 of our main brief—sustaining the validity of agreements restricting the place where or the persons to whom vendees of property may resell, under the Sherman Act, other federal antitrust laws and common law.

Thus, it is manifest that agreements between competitors or potential competitors restricting territorial competition or restricting competition for particular customers or classes of customer are not *ipsa facto* illegal. The cri-

terion of legality or illegality is not universally and invariably the mere kind of restraint, but rather the type of restraint considered in connection with the ancillary or non-ancillary nature of the restraint.¹⁰ As the Government's cases show, where the restraint is a naked, non-ancillary restriction on competition having no purpose or effect other than restraint of that competition, the restraint is illegal. But, as those cases and the others referred to above also show, where the restraint is in aid of and ancillary to a larger, lawful transaction, the "rule of reason" applies. The legality of the restraint then depends on the facts relevant to the application of the "rule of reason"—a process plainly requiring the trial that has been hitherto withheld in this case.

II.

The Government's Argument—That the Legality of an Ancillary Restriction Depends on the Nature of the Property to Which the Restriction Relates, i.e., "Capital" Assets Versus "Repetitively" Sold "Inventory" Assets—Is Unsupported by the Rationale and Holdings of the Cases.

Despite the sweeping argument with which the Government commenced its brief, it later obviously felt compelled to deal with a few of the cases sustaining the validity

¹⁰The fact, pointed out by the Government, that the opinion in *Northern Pacific Railway Co. v. United States*, 356 U. S. 1, 5 (1958), in cataloguing a number of categories of *per se* restraints, included "division of markets" without distinguishing between naked, horizontal restraints and vertical, ancillary restraints is without significance. The opinion was obviously referring to the familiar class of naked, horizontal market divisions between competitors, as demonstrated by the case cited in connection with the category (*Addyston Pipe*), and it is scarcely to be expected that in a one-sentence, short-hand reference to a number of categories the opinion would indulge in close definition of a well-understood term.

of ancillary restraints and to admit that there are, indeed, at least some exceptions to the broad rule it had previously urged. The Government admits that under some circumstances, at least, a seller of property may lawfully impose territorial restrictions on a competitor to whom it sells its property. That concession is, however, a grudging one; it extends only to the situation where the property involved is a capital asset, as distinguished from inventory-type assets—the sole situation to which, the Government claims, the cases permit the application of the admitted exception. (U. S. Brief, pp. 38-44).

However, the courts have not in terms limited their holdings of the validity of ancillary restraints to situations where the restraints accompany sales of capital assets; but in every case where inventory assets were involved, the courts have nevertheless sustained the validity of such restraints. In the *Associated Press* case, *supra*, for example, this Court sanctioned restraints on the disposition of an inventory-type of property, news. Just as White is in the business of selling trucks, *Associated Press* was in the business of selling news, and in each case vendees of both concerns are engaged in the business of reselling what they have themselves bought. And in the great bulk of the cases cited in White's main brief and referred to above, the courts, whether federal, state or English, have sustained under both the antitrust laws and common law agreements containing territorial and customer restrictions relating to a variety of products involving "repetitive sales of goods manufactured on order or sold from inventory in the regular course of business."¹¹ The supposedly compelling force of the distinction sought to be drawn by the Govern-

¹¹See, e.g., *Green v. Electric Vacuum Cleaner Co.*, 132 F. 2d 312 (6th Cir. 1942), *cert. granted* 318 U. S. 753, *cert. dismissed on motion of petitioner* 319 U. S. 777 (1943); *Phillips v. Iola Portland Cement Co.*, 125 Fed. 593 (8th Cir. 1903), *cert. denied* 192 U. S.

ment has evidently escaped the many courts that have not made any such distinction.

The cases cited by the Government that supposedly draw such a distinction—*Adams v. Burke*, 17 Wall. 453 (1873); *Keeler v. Standard Folding Bed Co.*, 157 U. S. 659 (1895); *Dr. Miles Medical Co. v. John D. Park & Sons*, 220 U. S. 373 (1911); *Boston Store of Chicago v. American Graphophone Co.*, 246 U. S. 8 (1918); *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339 (1908); and *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436 (1940)—are actually not based on any such distinction.

The *Boston Store* and *Bobbs-Merrill* cases are merely price-fixing cases, like the *Dr. Miles* case, which is discussed at some length below. Similarly, in *Ethyl Gasoline*, where the defendants maintained an elaborate system of patent licensing, covering a number of patents indispensable for the manufacture of gasoline, this Court struck the system down because its purpose and effect was to fix the price at which the patent licensees sold gasoline and to regiment an entire industry.

The *Adams* and *Keeler* cases are concerned solely with the scope of the patent monopoly and have nothing whatever to do with the extent to which the patentee or licensee

606 (1904); *Reylon, Inc. v. Regal Pharmacy, Inc.*, 29 F.2d 100 (E. D. Mich. 1904); *Reliable Volkswagen Sales & Serv. Corp. v. World-Wide Automobile Corp.*, 182 F. Supp. 412 (D. N. J. 1960); *King Motors, Inc. v. Delino*, 136 Conn. 496, 72 A. 2d 233 (1950); *McConkey v. Smith*, 112 Kan. 560, 211 Pac. 631 (1923); *Reylon Prods. Corp. v. Bernstein*, 204 Misc. 80, 119 N. Y. S. 2d 60 (Sup. Ct. 1953), *aff'd mem.*, 285 App. Div. 113, 142 N. Y. S. 2d 364 (1955); *Hickok Mfg. Co. v. Fairley Trading Corp.*, 117 N. Y. S. 2d 874 (Sup. Ct. 1952); *Kessler v. A. W. Hale Motor Co.*, 127 Misc. 413, 217 N. Y. Supp. 182 (Sup. Ct. 1926); *Johnston v. Franklin Kirk Co.*, 83 Ind. App. 519, 148 N. E. 177 (1925); *In re Austin Motor, Ltd.'s Agreements*, [1958] 1 Ch. 61 (1957); *cf. Boro Hall Corp. v. General Motors Corp.*, 37 F. Supp. 999 (S. D. N. Y. 1941), *aff'd*, 124 F. 2d 822, *rehearing denied*, 130 F. 2d 196 (2d Cir. 1942), *cert. denied*, 317 U. S. 695 (1943).

manufacturer may lawfully control the resale or use of the patented articles by those to whom they have been sold. The cases hold simply, in the former case, that one who buys a patented article from one having rights under the patent limited to one area of the United States is not an infringer by virtue of his use of the article in another section of the United States; and, in the latter case, that one who buys a patented article from the patentee or a licensee having similarly limited rights is not an infringer by virtue of his resale of the article in another section of the United States. Not only did the Court not draw the distinction in those cases that the Government now urges, but the Court expressly avoided passing on the validity of an agreement by the seller of a patented article restricting the purchaser's use or disposition of the article. In the course of expressing "no opinion" on this question, the Court said: "It is, however, obvious that such a question would arise as a question of contract, and not as one under the inherent meaning and effect of the patent laws." 157 U. S. at 666. Moreover, in *Hobbie v. Jennison*, 149 U. S. 355, 363-64 (1893), another patent case, a unanimous Court stated that contracts limiting the licensees' territories of resale would be valid.

That the courts have not drawn the distinction urged by the Government should occasion no surprise, in view of the fact that there is nothing in the rationale of the cases sustaining ancillary restrictions that inherently limits its application to restraints ancillary to sales of capital assets, as distinguished from inventory assets. Basically, that rationale is that it is reasonable to permit a seller to restrict competition of his own creation for the protection of the business that he retains. There is no essential difference between the case of a seller of capital assets who creates a potential competitor and who desires to be protected against that competitor in his retained business and the case of a seller of

inventory goods who likewise creates potential competitors in respect of his retained business and desires protection against that competition. In either case, the competition is of his own creation. In either case the seller is continuing to carry on his own business, and it is the business of the seller that is being protected.¹²

III.

Neither *Dr. Miles* Nor *Bausch & Lomb* Controls the Present Case.

It is apparent, in the end, that the Government places its ultimate reliance on the *Dr. Miles* and *Bausch & Lomb*¹³ cases, which in its view present an analogy controlling the present case. (U. S. Brief, pp. 20-21, 33-38, 46-48). Those cases hold, of course, that vertical resale-price-maintenance agreements are illegal *per se*, and the argument is that, by analogy, vertical agreements containing territorial and customer restrictions must also be unlawful.

Although the argument is not without a degree of plausibility, it is worth noting again that, up to the time of the decision in this case, no opinion of any court, nor any secondary authority,¹⁴ had embraced that argument in the

¹²Indeed, the accepted rationale of the validity of restrictions ancillary to the sale of property does not even require that the competition permitted to be protected be that created by the one obtaining protection and which, but for him, would not exist. In the *Cincinnati Packet* case, *supra*, for example, the buyer was given protection against the seller, who agreed to withdraw from competition between certain transportation points.

¹³*United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707 (1944).

¹⁴The secondary authorities writing on the subject include the learned, incumbent Assistant Attorney General, one of Government counsel herein, Loewinger, *The Law of Free Enterprise* 114-15 (1949).

half century that it had been available. It should occasion at least some pause that all other courts have consistently decided cases oppositely to what the ancient, but well-known, and quite vital, *Dr. Miles* case is now claimed to have required.

The refusal of the courts to be controlled by the "controlling" authority becomes understandable upon further examination of the problem. Analysis readily demonstrates that the argument by analogy from price-fixing cases is without firm foundation.

A fact of no little relevance to the validity of the analogy is that the *per se* rule as to price agreements found strong support even in the common law as developed prior to the Sherman Act. Indeed, at the very time and in the very case in which the "rule of reason" was announced by this Court as to other types of restraints, *Standard Oil*, price agreements were recognized as an exception. *Dr. Miles* and *Standard Oil* were argued in the same month of the same Term of Court and decided almost at the same time. When the development of the law was later extensively reviewed by this Court in *Trenton Potteries*,¹⁵ this same distinction was recognized.

This distinction, which defeats the Government's analogy, is strikingly demonstrated by the *Cincinnati Packet* case, *supra*, this Court's first and leading decision under the Sherman Act on the validity of ancillary restraints on territorial competition. In that case ancillary to the sale of various vessels by one shipping line to another were two restrictive agreements—one imposed by the buyer on the seller calling for the withdrawal of the seller from competition between certain shipping points; the other imposed by the seller on the buyer requiring the buyer to maintain the same rates as the seller. This Court, as indicated above, sustained the validity of the former restraint, and

¹⁵United States v. Trenton Potteries Co., 273 U. S. 392 (1927).

at the same time refrained from decreeing the invalidity of the latter restraint only because, for reasons stated in the opinion, the illegality of that restriction was not deemed germane to the decision. Here, then, in a case involving horizontal, ancillary restraints—surely as suspect from the antitrust standpoint as vertical restrictions—this Court itself drew the distinction between price-fixing and territorial restraints.

That distinction is a rational and significant one. The Government's argument is that, if a restriction merely restraining prices is unlawful, then a territorial or customer restraint—a "total" elimination of competition of "identical" effect—must also be illegal. The deceptive nature of that argument lies in the erroneously assumed identity of effect.¹⁶ Under a resale-price-maintenance program such as *Dr. Miles* involved, dealers could not compete as to price even with dealers in different brands. Under White's territorial agreements, on the other hand, the prices charged by dealers are not controlled as to trucks, parts, services or in any other respect. Thus, not being handicapped as he meets the competition of White's giant competitors, the White dealer is free to pass on the benefits of any efficient distribution methods he may devise or to adopt a high-volume, low-profit policy and thus to promote interbrand competition.¹⁷

¹⁶Moreover, identity of effect, even if it exists, is not in all cases a conclusive, or even a valid, argument. If it were, no merger between competitors would ever be valid. Nor would any ancillary restraint such as was involved in, for example, the *Oregon Steam Navigation* and *Cincinnati Packet* cases. It can scarcely be argued that the restraints involved in any such merger or in such cases have any different effect from what they would have if they were the result of naked, unlawful restrictive agreements between competitors.

¹⁷The Government asks, "What is the importance of *interbrand*, as opposed to *intra-brand* competition?" (U. S. Brief, p. 31). This puzzlement cannot be real. When the comparison is between competition among White dealers and competition among White, General Motors, Ford and the rest, the question hardly seems worth asking.

In the light of the foregoing, the following comments in Note, *Restricted Channels of Distribution Under the Sherman Act*, 75 Harv. L. Rev. 795, 800-01 (1962), are fully warranted:

"Nor [referring to the prior conclusion that the *Bausch & Lomb* case is also distinguishable] do the *Addyston Pipe* and *Dr. Miles* decisions compel the illegality per se of territorial and customer restrictions, even apart from the possibility of distinguishing those cases as being half a century old and hence not necessarily applicable to today's business world. For the restraints with which the Supreme Court dealt there were quite different from those involved in *White Motor* In any case it remains to be demonstrated that the necessary effect of territorial and customer restrictions imposed by the manufacturer is at all similar to the settled propensity of resale price maintenance to prevent dealers or distributors from passing the benefits of efficient distribution on to consumers by adopting a high-volume, low-markup policy, to facilitate parallel pricing at the manufacturer's level, to carry an oligopolistic price structure down from the manufacturer's level into the chain of distribution, and otherwise to injure competition"

Bausch & Lomb is merely another resale price maintenance case, like *Dr. Miles*, and has been uniformly so regarded, even by Judge Rifkind, who had the case in the District Court. Rifkind, *Divisions of Territory Under the Antitrust Law*, in CCH, *Antitrust Law Symposium—1953*, at 173 (1954). It had nothing whatever to do with territorial restraints. To the extent that customer restrictions were involved in the case, they were merely in aid and a part of the price-fixing agreements. The bearing of *Bausch & Lomb* on the present case was fully discussed in the Brief For Appellant In Opposition To Appellee's Motion To

Affirm, at pp. 47—previously filed herein and to which the Court's attention is respectfully directed—wherein it is demonstrated that *Bausch & Lomb* is not in point.

IV.

The Government's Suggested Alternatives by Which White Supposedly May Maintain a Distribution Organization Competitively Effective in Interbrand Competition and May Maintain Its Reputation As a Custom Builder of Trucks Offer No Solution of the Practical Business Problems to Which White's Territorial and Customer Agreements Are Directed.

A. The Problem of Maintaining a Strong Distribution Organization Is Not Met Either by the Various Controls of or Sanctions Against the Dealers Suggested by the Government, but by the Territorial Agreements Employed by White.

In deprecating the business justifications suggested by White as supporting the reasonableness of the territorial restrictions in its agreements with its distributors and dealers, the Government repeats the various devices suggested by the court below, and advances a number of its own, that it claims would constitute a "wide and effective range of tools for developing a network of distributors and dealers who are financially sound and capable of vigorously promoting the sale of its trucks in every market." (U. S. Brief, pp. 25-26). On their face, the suggestions clearly represent an unrealistic, naive approach to the very practical problems faced by White in the distribution of its products.

A principal problem faced by White is how to secure and retain a financially sound distribution organization capable of carrying on effective interbrand competition. The solutions offered by the Government consist by and large of

various ways of controlling or placing sanctions against the dealers. Contractual requirements that the dealers spend specified amounts of time and money in sales promotion, that the dealers maintain adequate facilities, that the dealers assume "primary responsibility for sales coverage for specified areas and classes of customers,"¹⁸ etc. are proposed. Finally, it is suggested that, if all else fails, White may cancel the dealers' franchises or impose some lesser sanction. While the suggestions of the Government are relevant to keeping unzealous dealers up to the mark—and White in fact already employs a number of the suggested devices—those suggestions scarcely touch the basic problem of how the dealers may be kept in financial shape to fulfill the obligations that the Government suggests White place on them and to avoid the sanctions that the Government so kindly suggests that White use against them.¹⁹

¹⁸As to this particular suggestion, see also footnote 3, page 2; *supra*.

¹⁹One wonders on what basis the Government states that such methods "have been found adequate by American industry in general" (U. S. Brief, p. 26), when it is common knowledge that wide segments of American industry have apparently found it otherwise, and official organs of the Government have seen fit to counsel business and industry as to the advisability of employing territorial franchises. See Brief for Appellant, pp. 12, 14-16. In this connection, the Government's argument that the abandonment of territorial and customer limitations by various concerns under the pressure of existing legal action by the Government or under the threat of legal action—in some cases, criminal prosecution—proves that industry has determined that such limitations are unnecessary, is at least a curious one.

In any event, what may or may not be true for "industry in general" has certainly no necessary relevance to White or, doubtless, to others with similar problems. With respect to the Government's argument from the automobile industry (U. S. Brief, pp. 26-28); the problems of the truck industry, which produces a total of 80,000 heavy-duty trucks a year—some, like White's custom-made—are quite different from those of an industry that produces 7,000,000 stock-model cars a year. Finally, as we have earlier pointed out, the nature of the problem and what is reasonably necessary to solve it involve factual issues that are hardly susceptible of determination on summary judgment and without a trial. (Ninety percent of White's business is in heavy-duty trucks).

B. White's Reputation As a Custom Builder of Trucks Can Be Effectively Preserved, Not by the Exhortations to the Public Proposed by the Government, but Only by White's Control of Who Will Be the Dealers Who Necessarily Play an Important Part in Such a Custom Business.

In discussing White's customer restrictions, the Government deals in a single sentence with the rather singular problem presented by White's custom sales of trucks. As was pointed out in White's main brief (at pp. 17-18), in the custom manufacturing and selling of trucks the dealer participates in a very real way in the design and thus in the construction of the trucks. Thus, White's reputation as a custom builder, on which it depends for its existence as a competitor of the giant non-custom truck manufacturers, is necessarily at the mercy of dealers—hence White's restriction preventing the sales of trucks through unauthorized dealers in whose selection and operations White can have no voice. As to that problem, the Government contents itself with the assertion that *Dr. Miles* controls and that White's problem can be "substantially" solved "by such legitimate means as informing the public of the advantages of dealing with the distributors or retailers it chooses and officially recommends" (U. S. Brief, p. 49). The ivory-tower nature of that suggestion as a solution of a very practical and important problem seems obvious. And the notion that *Dr. Miles*, whatever its effect on other types of restrictions may be thought to be, requires the prohibition of the only practical method of ensuring the quality of White trucks, and thus White's reputation, is preposterous.²⁰

²⁰Unlike here, in *Dr. Miles* the product was a "patent" medicine, in the manufacture of which the dealers neither played, nor could have played, any part. See *Dr. Miles, supra*, 220 U. S. at 407.

Conclusion

It is submitted that the decision below, if allowed to stand, will result in a strait-jacketing of business not required by any precedent and in total disregard—indeed, in ignorance—of business realities.

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January 4, 1963